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The American
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WILLIAM OF OCCAM AND THE HIGHER LAW*

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William of Occam has fittingly been called the "most subtle doctor of the Middle Ages." Despite this fact, or perhaps because of it, the vast political writings[1] of this famous fourteenth-century scholastic have been surprisingly neglected by modern students, particularly in England and the United States. It is commonly agreed that among general philosophers of the Middle Ages this "second founder of nominalism" is surpassed by St. Thomas Aquinas alone. Surely, therefore, the presumption is reasonable that the encyclopedic mass of Occam's political writings conceals many "diamonds in the rough," only awaiting discovery. The present writer hopes that he may throw some light on certain important problems discussed by Occam, especially that most significant one of a "higher" or fundamental law.

An impression seems prevalent in many quarters that Occam obtained most of his political ideas from his famous contemporary, Marsiglio of Padua, who has established himself among modern students as the really great political genius of his times. Without detracting from Marsiglio's well-deserved fame, we are quite unable to accept this view. On the contrary, Occam, as might be expected of such a great general philosopher, can stand upon his own feet, and his political theory in many respects exhibits characteristics entirely independent of any Marsiglian influence.

* A concluding installment of this article will appear in the February issue.

[1] They cover about 900 folio pages in Goldast's *Monarchiae*, Vol. II, and are exceeded by those of no other medieval political writer, unless it be St. Thomas Aquinas. Other political works published since Goldast considerably increase this amount. See Scholz, *Unbekannte Kirchenpolitische Streitschriften* (Rome, 1911), Vol. I, pp. 141-189; Vol. II, pp. 392-480.

Riezler's hypothesis of a mutual interaction between the two is probably correct.[2]

Nor is the allegation tenable that Occam's writings are so diffuse, obscure, and self-contradictory that his own opinion on important questions can never be ascertained satisfactorily.[3] It is true that Occam habitually presents all sides of the questions he discusses, and in certain instances specifically disclaims any intention of setting forth his own views.[4] But a careful analysis of Occam's actual words will usually reveal his meaning and the position which he occupied on the questions under debate. With respect to the idea of the higher law, there is a body of remarkably clear and self-consistent doctrine which can justly be designated as Occam's own. Indeed, by the aid of his sound, if often tedious, dialectical method, Occam attained a synthetic grasp, a profundity, and an originality equaled by few, if any, other writers of the Middle Ages. It is high time that his piercing intellect receive due recognition.

If we are to concentrate our attention on Occam's theory of a higher law, the first question naturally is: What do we mean by "higher law"? For the purposes of this discussion, the term may be defined as those rules of social conduct conceived of as limiting determinate authority and as laying down the conditions under which such authority must be exercised. It is "higher" because it is above the legal rules emanating from such political authority. Determinate political authority is public-legal control exercised by a *clearly recognizable, definite man or body of men.* John Austin's sovereign is, by this definition, a "determinate political authority." The higher law thus becomes those rules, springing in large part from a source or sources distinct from such sovereign or other definite political authority, which limit its jurisdiction. In John Dickinson's phrase, the higher law is the "law behind law," the law behind the rules laid down by any definite, tangible center or complex of governmental control.[5] The vast,

[2] Sigmund Riezler, *Die Literarischen Widersacher der Päpste*, p. 274.

[3] See W. A. Dunning, *Political Theories, Ancient and Medieval*, p. 245; Paul Janet, *Histoire de la Science Politique*, Vol. I, pp. 485-595; and R. L. Poole, *Illustrations of the History of Medieval Learning and Thought*, p. 244.

[4] Cf. *Octo Quaestiones*, Book VIII, ch. 5, printed in Melchior Goldast's *Monarchiae* (Frankfurt, 1668), Vol. II, p. 393. Hereafter, Goldast, Vol. II, will be cited simply by pages.

[5] See John Dickinson, "The Law Behind Law," 29 *Columbia Law Review*, 113-146

amorphous populace, the "people" or "society," is not a determinate political authority. On the other hand, any identifiable center of public-legal control, such as emperor, pope, king, feudal lord, municipality, general council, organized estates, or other legislative body, acting as or for the people, falls within this category. Custom, if it is conceived of as limiting all determinate political authority, "natural law," and "divine law" are ordinarily higher law. Statutes or decrees, on the other hand, are generally civil, or lower, law. We propose, then, to consider Occam's theory of the relation of determinate political authority and the law it lays down to the higher law. This will inevitably involve a careful investigation of the nature, sources, and branches of the higher law, as well as the question of whether it really is law or merely "morality." Finally, also, the problem of sanctions in Occam's theory must be faced. How far must men obey rules violating higher law? Can any machinery be invoked against a recalcitrant ruler or ruling body? Surely no more fundamental political or legal problem could occupy the minds of medieval thinkers, and none has more far-reaching implications for the history of political thought or for modern constitutional doctrine.

Occam does not, of course, nicely label and catalogue his theory of higher law as such. It must never be forgotten that his writings are primarily "tracts for the times," polemics written to defend the Emperor Lewis of Bavaria against his arch-antagonist Pope John XXII (*circa* 1330). Occam focuses attention upon the extent and limits of papal power and its relation to temporal authority. However, he drops many incidental, though highly important, remarks concerning the latter, so that we can piece together a quite systematic theory concerning it also in relationship to higher law.[6] In this period, the Papacy is indeed as politically important as the Empire or national kingdoms. Many disputes involved secular control exercised or claimed by the

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and 285-319. Dickinson does not believe it advisable or correct to designate "higher law" as real law today, although he admits that it was law in the Middle Ages. See his *Administrative Justice and the Supremacy of Law in the United States*, p. 84. The present writer agrees completely as far as the Middle Ages are concerned.

[6] Many readers will perhaps be surprised to discover that Occam, though called upon to defend the Emperor with the "pen, instead of the sword," no more envisaged an absolute and unlimited imperial power than a papal one.

Pope; moreover, discussions of the nature and limits of his purely spiritual powers and of his relation to the church councils furnish instructive analogies, applicable *mutatis mutandis* to the temporal authorities.

For Occam, as for most of the great medieval thinkers, all laws, jurisdictions, and authorities come from God in the same sense in which the Apostle Paul spoke when he said that "there is no power except from God."[7] Occam would, however, have been the first to recognize that this settles few problems. In any question of conflicting laws or authorities, we need to know what law or set of laws takes precedence, what precepts come most directly from God. In the elaborate feudal hierarchy in which Occam lived, the burning questions obviously turn upon this matter of mediation. The laws coming immediately from God must take precedence over those coming only mediately from him.

Occam designates those rules coming most directly from divine revelation, without the intervention of any human will, as divine law, *lex divina,* or *lex Dei.* Such law relates primarily, if not exclusively, to spiritual matters and overrules any contrary human law, no matter by whom promulgated.[8] If, for example, a king, or other authority, should order the worship of Mohammed or the observance of the laws of the Jews, his subjects would never be excused from their sin if they obeyed. Everyone capable of reason is expected to know that divine law stands over mortal law.[9] No mortal can command obedience in subversion of divine law,[10] which includes the *lex Christiana,* or evangelical law,[11] the law contained in the Holy Scriptures[12] and the law ordained by Christ.[13] Under divine law, the Pope has the power of intervening in temporal matters when subversion of the Christian faith is threatened. Occam qualifies this papal prerogative, however, very strictly. It may not be exercised regularly and directly, but only in exceptional cases and in special circumstances, and when all lay authorities fail to perform their duties.[14] Although divine law is immutable, Occam hints in one place that it may not all be

[7] *Opus Nonaginta Dierum,* ch. 88, p. 1146.
[8] *Dialogus,* Part III, Tractatus II, Liber II, ch. 4, p. 904.
[9] *Dial.,* Part I, Liber VI, ch. 47.
[10] *Ibid.*
[11] *Ibid.,* I, VI, 47, p. 51.
[12] *Ibid.,* I, VI, 100, p. 630.
[13] *Ibid.,* III, I, I, 16, p. 786.
[14] *Ibid.*

eternal; some provisions were promulgated only for the benefit of bygone ages and have lost their significance today.[15]

Next to divine law comes natural law. This contains provisions conceived of as immutable and binding on every human authority and individual. Unlike divine law, it does not come through special revelation, but is implanted by God in all men's hearts so that "he who runs may read." We constantly find *ius naturale* and *ratio naturalis* linked together, which shows us that Occam held to the time-honored ancient and medieval tradition of eternal, immutable principles of nature, discoverable by the use of reason.[16] Gierke regards Occam as a member of that school which saw the essence of natural law in will rather than reason, and which identified it with the divine command or will. In this respect he contrasts him with Aquinas, whom he considers much more inclined to emphasize the reason immanent in the Being of God as the source of the law of nature. According to Gierke, Occam's views proceed from pure nominalism, Aquinas' from realism.[17] He does not, however, cite any supporting passage from the author for his interpretation. Our own conclusion is that no really essential difference exists between Occam and Aquinas on this point, and that it is on the whole erroneous to extend the nominalistic-realistic schism to embrace their respective theories of natural law.[18] To be sure, Occam linked up natural law with

[15] *Ibid.*, III, I, II, 20, p. 808. [16] *Ibid.*, I, VI, 62, p. 568.

[17] *Political Theories of the Middle Ages* (Maitland trans.), pp. 172-173, note 256.

[18] Indeed, the general similarity of their two theories of natural law is quite noticeable and remarkable. Occam borrowed a great deal from Aquinas and must thank the master for many of his underlying ideas about and classifications of law. Aquinas furnished the general lines within which Occam, and indeed all his successors, moved. How far Occam was from a mere plagiarist, however, will become evident to anyone who makes even the most superficial examination of their writings. In countless places Occam refines and subtly develops ideas present, if at all, only in the most rudimentary form in the master. His ever-awe-inspiring ability to draw acute distinctions well merits for him the title of *subtillismus doctor*, and his synthetic grasp is second only to Aquinas'. Perhaps Occam's greater stress on the *jus gentium*, as a legal category which did allow for particularistic variations from ideal norms, is some evidence of his nominalistic bias. But the point cannot be pushed very far. Occam also emphasized the ideal and immutable elements of natural law, while, on the other hand, Aquinas was too great a thinker not to realize the importance of *jus gentium* as a means of adapting ideal norms to practical circumstances. The similarity of the two theories, their oneness on many critical points, deserve, in our opinion, much greater stress than their differences. This is but another and striking testimonial to the widespread, deeply rooted, and unwavering medieval belief in and consciousness of a higher law

God, as he did all law, directly or indirectly, mediately or immediately. But so did Aquinas, and so did all the other great medieval thinkers. The evidence goes to show that he had a clear distinction in mind between divine law and natural law and that, when he did link the two together, he characterized both types of law as "right reason" rather than "divine will."[19] The distinction which Occam himself drew is that natural law, together with positive human law, regulates the temporal affairs of men without the interposition of any divine revelation; whereas spiritual matters are controlled to a considerable extent by such revelation[20] or by divine law in its strictest sense.

Unmistakably, Occam regards all inferior human laws as subject to correction and rejection by natural law, just as much as by divine law. "No just positive law can be contrary to natural law."[21] Nor is it correct to interpret this as a merely moral obligation, without legal significance or binding force. The higher law is quite as much law as the lower positive law, indeed more so, just because it is "higher," and any conflicting lower law is no law at all. This is made plain in unequivocal language. To be sure, no one can disobey laws laid down by superior authority at will (*ad libitum*), but such disobedience is not only justified, but indicated as a duty, if *lex superior* or *ratio evidens* can be shown to be on the side of him who disobeys. "And the reason of this is because there can be no law which is openly repugnant to superior law or to reason, whence any civil law whatsoever which is repugnant to divine law or obvious reason is not law, and in the same manner the words of canon or civil law, in case they are repugnant to divine law, i.e., Holy Scriptures, or to right

above all human persons and authorities, a veritable "law behind law." Here were two philosophers standing at the opposite poles of realism and nominalism in their general philosophies and their *Weltanschauungen*, yet agreed in their fundamental presuppositions concerning natural and divine law. It would appear that Occam, despite his radical nominalism, could not divorce himself from the ingrained legal thinking of centuries, as summed up in the *Summa Theologica* of Aquinas. Without in any way disparaging the former's tremendous contributions, immense ability, and marvelous keenness, we cannot help feeling that Aquinas was the more consistent and that his realism (or in modern terminology, idealism) is a truer philosophical expression of the legal ideas which both men held in common than Occam's nominalism. This only makes the extreme importance, fixity, and intensity of medieval higher-law notions the more evident.

[19] *Dial.*, I, VI, 47, p. 551.

[20] *Ibid.*, III, II, II, 4, p. 904.

[21] *Ibid.*, I, VI, 100, p. 629.

reason, are not to be observed.'"[22] All human authority, not excepting emperor and pope, is limited as a matter of course by the higher natural law.[23] This is indeed a self-evident proposition and the foundation stone of Occam's whole system. No human power can break unbreakable natural law. Such a possibility does not enter his mind.

These statements, though forceful and clear-cut, do not exhibit any great originality. It is in connection with the further elaboration of the subject that we first encounter Occam's subtle ability to draw fine distinctions which mark real differences, and which he made because he recognized so profoundly the unending complexity of human affairs and the necessity of adapting theories to fit the practical conditions of the times. He distinguishes three senses in which we may use the term "natural law," and these we must keep clearly in mind if we are to understand Occam. In the first sense, natural law is "that which conforms to natural reason, which in no case fails." He has, and we have, thus far been using the phrase in this sense, in emphasizing the binding character of natural law as against all human and subordinate authority. In the second sense, natural law is a purely ideal concept. "It is that which must be observed by those who employ natural equity alone, without any human custom or constitution."[24] No people today really lives by natural equity alone. Since the fall of man, or as a result of original sin—in other words, since man is not perfect—we can only expect at most a distant approximation to it. Taken in this second sense, therefore, natural law has a directive or normative force only, not a binding one. We can call it law only in the case of an ideally perfect community. These two categories correspond to distinctions laid down by St. Thomas Aquinas between the immutable and mutable parts of natural law, between the unchangeable principles and the directive demonstrations of that law,[25] although Occam worked out the theory in much more detail. Natural law in the first sense is immutable, in the second, changeable, although the change should be as slight as is consistent with actual condi-

[22] *Ibid.*, I, VI, 100, p. 630.

[23] For the Emperor, cf. *Dial.*, III, II, II, 26, p. 922-3; and for the Pope, *Ibid.*, III, II, I, 23, pp. 891-2, and *Octo Quaestiones* I, ch. 2, p. 315.

[24] *Dial.*, III, II, I, 10, p. 878.

[25] *Summa Theologica*, Part II, Vol. I, Qu. 94, Arts. 5-6.

tions and needs. As examples of natural law in the first sense, Occam gives us the rules that "thou shalt not commit adultery," "shalt not lie," and the like.[26] "Thou shalt not worship a foreign god" is also included in this category.[27] The two leading rules of natural law in the second sense are "property is common to all" and "all men are free," about both of which we shall have something to say later. The practical importance of the rule against adultery or "breaking the marriage vow" can be seen from Occam's specific illustration.[28] Questions of adultery and matrimony pertain to secular jurisdiction as far as natural law is concerned and to ecclesiastical as far as divine law is involved. Since natural law does not forbid a man to have several wives (and it upholds the sanctity of the vow), it follows that no secular ruler can punish polygamy as adultery. The ecclesiastical judge may, however, punish it with severe penalties because polygamy is a crime against divine law.[29] Here we have a clear and concrete example of the binding force of natural law upon a secular ruler, as well as further evidence of a distinction between divine and natural law.

Occam's peculiar genius comes most clearly to the fore in his treatment of natural law taken in the third sense, or *jus gentium*, a category which had caused Aquinas a considerable amount of difficulty. We have seen that natural law in the second sense, as a normative principle of natural equity, is not immutable; that it is possible to "establish that something be done contrary to that law."[30] Now, in the third sense, natural law includes those deviations from pure natural law in the second sense, and this is *jus gentium*, together with other human law. "In the third sense, natural law is called that which is derived from the *jus gentium* or from *any human act* by evident reason, unless by the consent of all who are interested the contrary is established; this may be called natural law by supposition."[31] As a matter of fact, we have really moved a long way from pure natural law in making this

[26] *Dial.*, III, II, III, 6, p. 932.

[27] *Ibid.*, III, II, I, 10, p. 878; cf. above note 9.

[28] Cf. Dorner, "Das Verhältnis von Kirche und Staat nach Occam," *Theologische Studien*, 1885 (1-2), the best treatment of Occam's political theory of which we are cognizant.

[29] *Dial.*, III, II, II, 16, p. 915. [30] *Ibid.*, III, II, III, 6, p. 933.

[31] *Ibid.* Occam's great debt to Aquinas will be obvious to anyone who reads the *Summa Theologica*, II, I, Qu. 94, art. 5.

jump to *jus gentium* and to other human law, and Occam knows it. He really regards *jus gentium* much more as human law than as natural law. In a most important and original passage, he tells us that we must distinguish between human laws of which "certain ones are laws of emperors and other persons and of particular communities subjected to the Emperor; these laws may be called civil laws; certain are in a sense proper to the entire community of mortals, which seem to pertain to the *jus gentium,* which in a sense is natural and in a sense human or positive." This *jus gentium,* or "higher human law," clearly binds the Emperor and is above all civil law or enacted law.

> The Emperor is never bound of necessity, even if it is proper for him to live, by his own laws, *provided* those laws are kept which pertain to the *jus gentium,* for the reason that all nations (*gentes*) and especially all rational people use such law, just as the Emperor is bound to the same. Whence generally he is not permitted to prohibit occupation of land, wars, captivities, servitude . . . and other things which seem to pertain to *jus gentium.*[32]

One can see from this that Occam was an eminently practical person. Recognizing that he confronted a "condition, and not a theory," he refused to confine the discussion of higher-law limits on authority to ideal principles of pure equity. In a rough and imperfect world we can still retain important limits on imperial, or other determinate, political authority and yet meet the facts of life halfway. *Jus gentium* is the nearest approach to ideal justice attainable, "taking men as they are and not as they should be." It contains principles which are in general to be obeyed by all rulers and subjects. They can, however, be modified by human beings, under exceptional circumstances, since *jus gentium* is human law. *Jus gentium* is always subject to modification by the consent of all mortals who can establish the contrary as law.[33] Even the Emperor can break *jus gentium* himself in exceptional cases, when the common good demands it, but it must be particularly noted that Occam hedges this authority in on all sides.[34] The criteria of the common good or of the general utility always here condition the exercise of imperial power. These points will

[32] *Dial.,* III, II, II, 28, p. 924.

[33] *Ibid.* This is a theoretical statement of the famous medieval principle of "quod omnes tangit ab omnibus approbetur." See also *Ibid.,* III, II, III, 12, p. 942. Note that the "consent of all mortals" is not a determinate political authority.

[34] *Jus gentium* is never fully to be abrogated. *Ibid.,* III, II, III, 12, p. 943.

become much clearer when we observe them later in their concrete content.

We have seen that Occam feels that natural law, taken in its first sense, does not afford sufficient restraint on the Emperor or king, and, on the other hand, is too practical to give the ideal principles of natural equity more than directive force as against them. Therefore, he interposes higher human law as a further limit, following pure natural law respectfully, though at a distance. *Jus gentium,* he says, was introduced through human addition, after original sin or the fall of man.[35] We must be quite clear as to what Occam meant by these words.

Although original sin was to the medievalist a burning reality, the words translated into modern language mean that modifications in pure natural law have to be made because of the actual conditions of the times and the imperfect character of human nature. Ideals must compromise with practical realities if any progress is to be made toward their realization. "A leader must be out in front, but not too far." This does not make *jus gentium* inequitable or unjust. On the contrary, it is human nature (man's "sinful" character) or practical circumstances that are responsible for the inequity or injustice, not the legal rules which are adapted to do everything possible to minimize injustice, to approximate ideal equity, and to promote the general welfare in an imperfect world. As Occam puts it:

> The custom (*consuetudo*) of the *ius gentium* is contrary to that natural equity which existed in the state of innocence, and indeed to that natural equity which ought to exist between men following reason in all things. To the natural equity which exists among men prone to dissension and acting badly, that custom is not contrary; and thus the contradiction is according to nature,[36] and not according to human morals, because such custom is not iniquitous or evil.[37]

In this sense, Occam was right in calling *jus gentium* natural. To be sure (and perhaps here his fundamental philosophical nominalism gives the key to his attitude), he saw the impossibility of extolling as a reality a set of ideal norms having no relation to the facts. But he could not fail to note, as one great fact, that men are constantly striving to approximate justice no mat-

[35] *Opus Nonaginta Dierum,* ch. 92, p. 1150.
[36] Here meaning the ideal state of things.
[37] *Ibid.*

ter how imperfect the realization.[38] Or, to sum it up in the admirable synthetic phrase of the great German jurist, Rudolf Stammler, he recognizes a "natural law with variable content."[39]

As we shall see later in more detail, private property rights are ordinarily subsumed under the *jus gentium*. By bringing such rights as these under this law, Occam, as far back as the fourteenth century, anticipated the modern critics of the natural-rights school. They quite properly point the finger of scorn at men like Locke for maintaining the inviolability of private property as a principle of immutable natural law, as a natural-legal right of the individual anterior to all society. The rights which Occam recognized under the *jus gentium* are not immutable, inviolable natural rights. They are rights, which, though generally invariable, can be adapted to changing circumstances, can be suspended under emergency conditions, just because they are essentially human and social, even though they embody the ceaseless striving of the human spirit toward the greatest attainable natural justice. To coin a phrase, we encounter here not natural-legal rights, but "social-legal rights." We use both the words "legal" and "social." For Occam, *jus gentium* is law just as much as natural law (first sense) and, as far as legal validity is concerned, differs from the *jus civile* (or enacted law of emperors, kings, or of the state) only in being on a higher plane. Most significant is the characterization "social." These rights arise out of human relationships in society, as distinguished from human political relationships. They limit generally, and except in extraordinary cases, emperor, king, councils, assemblies, and in fact every determinate political authority. They are not political creations of state or government, but are prior logically, legally, and often temporally, to the state regarded as the embodiment of determinate governmental authority. Unless we draw this distinction between the state and society, we completely fail to grasp the drift of Occam's theory.

This theory of the *jus gentium* as developed by Occam brings to full completion a movement of thought, the faint beginnings of which can be traced at least as far back as the Roman period. Cicero, the most acute of the Roman political philosophers, seems

[38] Cf. the famous couplet: "Ah! but a man's reach should exceed his grasp. Or what's a heaven for?"

[39] *Theory of Justice*, passim.

to have distinguished between *jus gentium* and *jus naturale*,[40] although not very clearly. The whole tenor of his thought warrants the conclusion that he regarded natural law as true law, since human law is merely embodied natural law and no state is conceivable except a just one, founded on law.[41] The best Roman jurists also seem to have distinguished between *jus gentium* and *jus naturale*, although Maine implies that they did not.[42] It will be recalled also that Seneca, the Stoic, extols a primitive state of innocence and points to private property, slavery, and government (institutions which, as we shall see, Occam brings under *jus gentium*) as inevitable consequences of the fall of man and the depravity of human nature.[43] Seneca is not entirely clear as to whether these institutions are themselves conventional examples of man's sinful character or natural in the sense of being the best remedies for it. The latter is the more likely interpretation, but Seneca never clearly faced the question. This problem caused the Christian fathers more concern than any other. Whether they considered the conventional institutions arising out of the fall as just or unjust is not an easy question, although the former view again seems the better.[44] The whole matter bears directly on theories of the social compact. The one line, taken by Sophist and Epicurean writers, and which has a modern representative in Hobbes, regards the state as purely conventional, purely a man-made affair, formed entirely irrespective of principles of justice. The other view, starting from the Stoics (if not with Plato and Aristotle), and shared by most modern social-contract writers, including Locke and Rousseau, considers the state, although man-made, as natural in the sense of a more or less perfect embodiment of and striving toward eternal principles of natural justice. Obviously, Occam, with his theory of *jus gentium*, falls in the second group.

Gratian, the great canonist of the twelfth century, distinguished between natural law and custom, the *jus gentium* being

[40] See his *Partitiones Oratoriae*, cap. 37, sec. 130-1.

[41] *De Republica*, I, 25.

[42] See Maine, *Ancient Law*, p. 46, and cf. Carlyle, *Medieval Political Theory*, Vol. I, Part II, ch. 3, and passages cited from Roman jurists.

[43] Carlyle, *op. cit.*, Part I, ch. 2.

[44] Whether St. Augustine regarded justice as essential to the state is a much mooted point. We can only note the controversy here.

included in the latter.[45] The exact position, however, of this extremely bothersome category in Gratian's theory is uncertain. His pupil, Rufinus, was somewhat explicit. After the fall, Rufinus tells us, man "stirred up the dying embers of the science of justice," which taught him to form treaties of concord and to enter into pacts "which indeed are called *jus gentium* because almost all nations employ them."[46] Here again the inchoate idea of a "natural law with variable content" appears.

St. Thomas Aquinas, in the next century and less than a hundred years before Occam, anticipates the latter's theory most nearly. He clearly distinguishes between *jus naturale* and *jus gentium,* classifying the latter, like Occam, under "human law," and, like him, deriving it from natural law. Aquinas specifically states that *jus gentium,* although contained under human positive law, proceeds from natural law just as "conclusions from principles." "It is in a certain sense natural to man, according as it is rational and derived from natural law, whence men easily consent to it; it is distinguished, however, from natural law, especially from that common to animals."[47] Building upon this basis, Occam worked out the whole thing in much more detail.

Occam's *jus gentium* bears a very striking resemblance to medieval customary law. He apparently recognized this, at least unconsciously. Like *jus gentium,* medieval custom is man-made and is generally regarded as unchangeable, but in practice is capable of being modified to a degree to meet changing social realities. Undoubtedly some theory of the identification of custom and the *jus gentium* was in the back of Occam's mind. Any human law, higher than the enacted will of a king, pope, emperor, or feudal assembly, must be custom. Occam does, indeed, speak in one place of a "consuetudo juris gentium," or "custom of the *jus gentium*;"[48] and when he says that "*jus gentium* can never be fully abrogated but only for time,"[49] he must have had some idea of custom in view. This is the only rational explanation when we consider that he regarded *jus gentium* as human, and not divine or natural, law in any strict sense. Finally, he says that it is a

[45] See Carlyle, *op. cit.*, Vol. II, Part II, ch. 4.
[46] *Ibid.*, citing the *Summa Decretum*, Preface.
[47] *Summa Theologica*, II, I, Qu. 95, art. 4.
[48] *Opus N. D.*, 92, p. 1150. [49] *Dial.*, III, II, III, 12, pp. 942-3.

principle of *jus gentium* that "what touches all should be approved by all,"[50] and that, since *jus gentium* is human law, "by the consent of all mortals acting contradictorily the contrary may be kept for law."[51] Both these last quotations strongly suggest medieval customary law. In general, unanimity was a fundamental principle in the Middle Ages; every member of the community was supposed, at least theoretically, to have a voice in matters affecting fundamental laws or customs. Occam would, of course, have been the last to carry out the principle to its ultimate and logical conclusion. In extraordinary or emergency situations, as we shall see later, he allowed a majority vote (perhaps fictitiously regarded as cast for all) to decide, the general welfare overriding individual desires. In such emergency instances, he allowed determinate political authority—king, emperor, pope, or council—to change the *jus gentium*. But he envisaged no absolute power. All authority, for him, had to act reasonably and in relation to special circumstances and cases, not arbitrarily. Ordinarily his *jus gentium*, like medieval customary law, was regarded as unchangeable or changeable only by the consent of all mortals, a process much more nearly resembling an unconscious, communal act than a consciously interposed legislative or constitutive act. Although this theory no doubt under-estimates the importance of change and evolution in the law, it seems to have developed in very large measure out of a real factual situation. No social or legal growth ever remains static. Certainly custom in the Middle Ages did not. The change, however, was so slow and gradual as to be almost invisible. At any given time, and by any given body of men, it was not deemed possible to do more than modify bits of custom, to bring new facts under old principles, to provide for exceptional circumstances, or to act so as to make the whole body of the law more self-consistent. The men of the Middle Ages (with Occam at their head) would have stood aghast and uncomprehending if confronted by the modern idea of a sovereign constitutive or legislative assembly. They could not conceive of a body theoretically able to change the whole body of existing law at will and overnight. The broad river of medieval custom wells up from many different sources and is fed by many different tributary streams. These include courts, kings, wise men, councils, popes, emperors, ecclesiastics, gilds, the sworn inquest of the

[50] *Ibid.*, III, II, III, 12, p. 942. [51] *Ibid.*, III, II, II, 28, p. 924.

countryside, and other institutions much less tangible and ponderable though no less significant. Perhaps all may be subsumed under the broad general category of the "sense of right of the community." Nowhere does the legal hierarchy pyramid to a single absolute and legally omnipotent sovereign head, be he regarded as a man, a body of men, or any definable combination of political organs or authorities. Only by the most imperceptible, if inexorable, of processes can this river of custom change its channel or be diverted from its bed.

Occam's largely implicit, but partly conscious, identification of *jus gentium* with custom can be found to a much less extent in previous writers. Cicero,[52] Gratian,[53] and Aquinas[54] seem to share this view, though they do not develop its consequences. The civil and canon lawyers also discussed custom at some length, but, for the most part, instead of identifying it with *jus gentium*, they assigned it to a place subordinate to enacted civil law or legislation. This attitude clearly shows their servile dependence upon Roman law, and their failure to take sufficient account of the actual conditions in the medieval legal world. Indeed, these lawyers always allowed a later enacted law, if explicit enough, to override an earlier conflicting customary law.[55] Only the great feudal lawyers, such as Bracton, and the feudal custumals, such as Beaumonoir's, definitely recognized feudal customary law as a higher law, setting bounds to enacted law.[56] But these lawyers did not take the further philosophical step of linking up custom with *jus gentium* and of thus developing a theory of "natural law with variable content."[57] Occam, indeed, came nearer to considering *jus gentium* as higher customary law than any other medieval writer we have observed.

This category of *jus gentium* constitutes the very core of his theory of higher law. A clearer comprehension of this truth will result from a consideration of the detailed and consistent appli-

[52] *Partitiones Oratoriae*, 137, sec. 130-1.

[53] Gratian, *Decretum*, VI, sec. 1.

[54] *Summa Theologica*, II, I, Qu. 95 and 97.

[55] Cf. Sigmund Brie, *Die Lehre von Gewohnheitsrecht*, passim. This statement, of course, leaves out of account higher natural and divine law which might come in to reënforce the prior customary law.

[56] For Bracton, see C. H. McIlwain, *Magna Carta and Common Law*, p. 35, citing Folio 1B; and for Beaumonoir, see sec. 1514 (Salmon ed., pp. 264-5).

[57] The only hint of such a linkage is Bracton's famous statement: "Non sub homine sed sub Deo et lege."

cation which he made of his principles. We turn, then, to his theories of the origin of political power, of private property, and of liberty.

All temporal government rested, for Occam, ultimately upon the consent of the governed. The community, or *communitas,* of the realm establishes and elects the national king, and the *communitas,* or *universitas,* of all mortals elects the Emperor; these are principles following directly from *jus gentium.*[58] If it is objected that "all political authority comes from God," the answer is that it "comes from God, but not solely from God. Imperial power comes from God through the mediation of men."[59] Occam even gives us an embryonic governmental contract theory in asserting that "it is a general pact of human society to obey its kings and more generally its emperor in those things which make for the common utility."[60] Thus the Romans saw the importance from the point of view of the common utility of the entire world of having one emperor govern all mortals. At this time, the necessity for peace and security overbalanced all else, and the consent of a majority of the people sufficed to start the government going.[61] Chaos had to be avoided at all costs. To make the government thus established entirely just and legal, the later consent of the whole world was necessary. Occam's true thought seems clearly, however, that, considering the anarchic conditions at the time of the institution of the Roman government, such "majority rule" was the nearest approach to justice then possible.[62] Ordinarily, such a cavalier disregard of the desires of the minority on such a great question would never be allowed by Occam.[63] The beauty of the *jus gentium* as human law, however, is that under extraordinary circumstances normally unbreakable principles of *jus gentium,* like this one of *quod omnes tangit ab omnibus approbetur,* can be broken or modified. Of course, the majority has no absolute power to override a minority in such a matter, but can act so only under emergency or exceptional circumstances. Its action must always, furthermore, meet the test of natural law, divine law, and the general standard of the common good.

[58] Dial., III, II, III, 12, p. 942; III, II, III, 6, p. 934; III, II, I, 29, p. 902.
[59] *Ibid.,* III, II, I, 8, p. 876; *ibid.,* 26, 899.
[60] *Ibid.,* III, II, II, 28, p. 924. [61] *Ibid.,* III, II, I, 27, p. 900.
[62] *Ibid.*
[63] Cf. A. L. Lowell's "consensus" as necessary to create a real public opinion. *Public Opinion and Popular Government,* passim.

From this theory of the origin of government, definite human-legal restraints (*jus gentium*) upon political authority can easily be postulated. These are in addition to those necessarily following from divine and natural law. The Emperor, for example, in relation to his subjects and their property, can only do those things which further the common utility.[64] Nor can he destroy the *imperium,* or political jurisdiction, in which he "lives, moves, and has his being," and "whatever works toward the destruction of the *imperium* does not hold as a matter of law (*de jure*)," so that such illegal imperial act may be revoked by a successor.[65] Emperors must, of course, in general obey the *jus gentium,* although in special cases, when the common utility would suffer prejudice by maintaining those rules, they may derogate from it.[66] Occam does envisage the historical existence of monarchies in which the king, unrestrained except by natural and divine law, ruled according to his own will, unbound by "any purely positive human laws or customs (*consuetudines*)."[67] In such a government, *jus gentium* would not restrain the king. However, Occam carefully distinguishes this form of government from the generally prevailing type of his own day and suggests that perhaps (*forte*) it can be found no longer anywhere in the world. In the second or "modern" form of government, "even if in a sense one man rules according to his own will,[68] yet he is bound by certain human laws and customs, which have been introduced, which he is held to maintain, and is obliged to swear and promise to maintain."[69] Again we discern in the back of Occam's mind a linking up of the higher law, or *jus gentium,* with fundamental medieval customary law. What are these "certain human laws and customs" if not the equivalent of Occam's *jus gentium?* We know that he did not deem emperor or king legally bound by laws of their own making, or by civil law in the strictest sense. *Jus gentium* is the only alternative. Occam's mention of the oath taken by the king can have only one meaning. This refers to the familiar coronation oath by which kings swore to observe and rule by the fundamental laws and customs of the realm. It will be recalled that Occam was an Englishman, even though like many of his fellow-countrymen he preferred to live on the Con-

[64] *Dial.,* III, II, II, 27-8.
[65] *Ibid.,* III, II, II, 28, p. 924.
[66] *Ibid,* III, II, I, 18, p. 887.
[67] *Ibid.,* III, I, II, 6, p. 794.
[68] That is, if we may interpret, he is not bound by his own laws. Cf. note 32 above.
[69] *Dial.,* III, I, II, 6, p. 795.

tinent. Very probably he had in mind the English coronation oath. Of course, the higher customary law in England would be the common law itself, particularly as embodied in such provisions as Chapter 39 of Magna Carta.

Occam's greatest vacillation occurs over the burning question of whether or not the Holy Roman Emperor is the temporal lord of the whole world. It seems clear that he recognizes a large measure of *de facto,* if not *de jure,* independence in the national kingdoms, and in one place he boldly says that a *de facto* situation might just as well be recognized as *de jure.*[70] From the point of view of higher law, the thing to determine is simply what the community of mortals desires: Does it still want to recognize the Emperor as the *de jure* world-sovereign or does it sanction a splitting up into separate national kingdoms, in each of which the community of the realm elects the king or regulates his succession to the throne? Perhaps Occam's vacillation is due to his uncertainty as to just how the community of mortals, or "public opinion," stands on this question. Or he may not have wanted to offend his sponsor, the Emperor Lewis of Bavaria.

Even though the community of mortals can substitute legally independent national kingdoms for a universal empire, it ought not to disturb existing arrangements (i.e., modify the *jus gentium*) except for just cause and with all due respect to vested rights. The qualification here introduced of reasonable cause shows how far Occam was from recognizing any arbitrary or absolute power anywhere on earth. Even the community of mortals cannot disturb the existing legal situation in which it had originally acquiesced or which it had tacitly sanctioned (a universal empire with the right of election vested first in the people of the city of Rome, later in the college of the German *Kurfürsten*) except for just cause. Such cause would be guilt on the part of the electors or manifest public utility or necessity.[71] Arbitrary upsetting of the legitimate rights of imperial electors would redound to the "detriment of the entire community of mortals."[72]

Although Occam occupies himself principally with the question of papal authority, we can only touch upon it here. His strong conciliar tendencies are well-known, and in them he resembles

[70] *Ibid.*, III, II, I, 10, p. 878, and III, II, II, 5 and 7, pp. 905 and 908.
[71] *Octo Quaes.*, V, 3, p. 382, and *Dial.*, III, II, I, 29, p. 902.
[72] *Ibid.*, ch. 31.

Marsiglio of Padua and such earlier writers as John of Paris and Durandus de Mende the Younger. Occam believed that every papal right, beyond the Pope's purely spiritual authority (*potestas ordinis*) coming directly from God, springs from the consent of the community of the faithful, or from human law and custom. The community, generally acting through the general council of the church or the college of cardinals, not only elects the individual pope but also has the right to depose him if he acts heretically or illegally. It cannot, however, act arbitrarily or transmute the institution of the papacy, as such, into an aristocracy or democracy, because of obvious higher law limitations.[73]

Regularly, the Pope possesses no temporal power, although he is exempt from temporal laws or laws of general councils which would impair his purely spiritual functions.[74] However, he possesses a strictly qualified right to intervene in temporal matters when the Christian faith is threatened gravely and laymen do not do their duty. Under such special circumstances, divine law gives him wide prerogatives over temporals.[75] Similarly (and this is only another striking example of Occam's consistent relativity), the Emperor and other laymen have a limited right of intervention in spiritual matters, if it is for "the common utility of the church." They can, of course, not assume purely spiritual functions (*potestas ordinis*), but only administrative control (*potestas jurisdictionis*).[76]

In the purely spiritual sphere, the Pope is limited not only by divine and natural law but also in fifteen other specifically enumerated matters. Among these restraints upon papal jurisdiction, Occam mentions, as outstanding, acts of "supererogation." Ordinarily, and in the absence of sin on the part of the subject or obvious reasons of utility or necessity, the Pope cannot compel temperance, fasting, virginity, or marriage.[77] This is strikingly analogous to the modern opposition to sumptuary legislation. The above bare outline should at least make clear how expressly Occam considered the authority of the Pope limited by a higher law.

[73] Ibid., III, I, I, 17, p. 786; III, I, II, 27, p. 816; III, II, I, 19; III, II, II, 1; *Octo Quaes.*, II, ch. 1.

[74] *Octo Quaes.*, I, 7, p. 322; and I, 8, p. 324.

[75] *Dial.*, III, I, I, 16, p. 786.

[76] *Ibid.*, III, II, III, 4, p. 929.

[77] *Ibid.*, III, II, I, 23, p. 892; III, II, II, 27, p. 923; III, II, III, 7, p. 935; III, II, I, 16, p. 786; *Octo Quaes.*, I, 7, p. 322; *De imperatorum et pontificum potestate* (Brampton ed.), pp. 58-9.

THE EMANCIPATION OF IRAQ FROM THE MANDATES SYSTEM

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The purpose of this article is to indicate how the competent authorities of the League of Nations came to accept the view that Iraq should be considered ready for the termination of the mandate, and how they worked out for the case of Iraq the detailed application of the general principles of mandate termination. The development of the general principles here applied for the first time is the subject of a separate study.[1]

The Iraq Mandate. Iraq was placed within the provisions of Article 22 of the League Covenant by the Council "decision" of September 27, 1924.[1a] By that decision, the Council adopted the treaty of alliance between Great Britain and Iraq, of October 10, 1922, and certain subsidiary agreements, as defining the relations of the mandatory and the mandated territory, and as giving effect to Article 22 of the Covenant. The decision provided that the British government should assume responsibility, toward all members of the League accepting the arrangement, for the fulfillment by Iraq of the terms of the treaty of alliance. Steps would be taken for the negotiation of such special extradition agreements as should be necessary. An annual report to the satisfaction of the Council should be made as to the measures taken during the year to carry out the provisions of the treaty of alliance, and copies of all laws and regulations promulgated during the year should be attached thereto. The British government undertook not to agree to any modification of the treaty of alliance without the consent of the Council. Disputes with members of the League not settled by negotiation should be referred to the Permanent Court of International Justice. "In the event of Iraq being admitted to the League of Nations, the obligations hereby assumed by His Britannic Majesty's Government shall terminate." If the treaty of alliance should expire prior to Iraq's admission to the League, the Council would be invited "to decide

[1] See my article, "The General Principles Governing the Termination of a Mandate," 26 *Amer. Jour. of Internat. Law*, 735-758 (Oct., 1932).

[1a] League of Nations Official Journal (hereafter cited as Official Journal), 1924, pp. 1346-1347.

what further measures are required" to give effect to Article 22 of the Covenant. During the period of the treaty of alliance, the privileges and immunities enjoyed by certain states under capitulation and usage would not be required for the protection of foreigners in Iraq.

The Treaty of Alliance. The treaty of alliance of October 10, 1922,[2] stipulated that the British government should provide Iraq "with such advice and assistance as may be required" without prejudice to her "national sovereignty." No foreign officials should be appointed by the Iraqi government without the concurrence of the British government. The king of Iraq agreed to frame an organic law for presentation to a constituent assembly, such law to be consistent with the treaty of alliance and to "take account of the rights, wishes, and interests of all populations inhabiting Iraq," and to protect certain specified kinds of liberties. The king agreed that his government should be guided by the advice of the British high commissioner "on all important matters affecting the international and financial obligations and interests" of the British government, and that the high commissioner should be consulted on what is conducive to sound fiscal policy, etc. Iraq should have the right of representation, which, when not used, should be exercised on her behalf by the British government. That government should use its good offices to secure Iraq's admission to the League as soon as possible. Military assistance should be furnished to Iraq in a manner to be determined from time to time. No territory in Iraq should be ceded or leased to a foreign state except for accommodation of foreign representatives and to provide facilities for British military assistance. The Iraqi government agreed to give effect to measures recommended by the British government for the protection of foreigners in judicial matters. Treaties and laws should be made or agreed to by the Iraqi government to carry out the international obligations assumed by the British government. No discrimination might be made against nationals of League members or any state enjoying under a treaty the rights of League members, as compared with British nationals or those of any foreign

[2] Official Journal, 1922, pp. 1505-1509; League of Nations Treaty Series (hereafter cited as L.N.T.S.), XXXV, pp. 14-18; House of Commons, Sessional Papers, 1924-1925, XXX, p. 587, Cmd. 2370, Treaty Series No. 17 (1925).

state "in matters concerning taxation, commerce, or navigation, the exercise of industries or professions, or in the treatment of merchant vessels or civil aircraft." Freedom of transit should exist. Freedom for missionary enterprise was safeguarded, subject to control for public order and good government. Iraq undertook to coöperate with the League in common policies for the prevention and combatting of disease. A law of antiquities based on the rules annexed to Article 421 of the Treaty of Sèvres should be enacted.[3] The financial relations of the parties should be regulated by a separate agreement, which should provide for British financial assistance when needed, and for Iraq's progressive liquidation of the liabilities thus incurred. Iraq might associate itself with neighboring Arab states for customs or other purposes. Differences as to the interpretation of the treaty of alliance should be referred to the Permanent Court of International Justice. The period of the treaty was fixed at twenty years.

On April 30, 1923, a protocol to the treaty of alliance was signed, by which the twenty-year period was reduced to four years from the ratification of peace with Turkey.[4] The subsidiary agreements concerning the employment of British officials, military assistance, rights of foreigners in judicial matters, and financial coöperation were all signed on March 25, 1924,[5] and were included in the Council decision as defining the obligations of the British government in Iraq. Their provisions do not come within the scope of the present article.

On December 16, 1925, the Council of the League decided that a certain boundary should be fixed between Iraq and Turkey in the Mosul region when the British government should have concluded a new treaty with Iraq guaranteeing the continuance of the mandate for twenty-five years unless Iraq should sooner be admitted to the League. Such a treaty was signed on January 13, 1926, and was confirmed by the Council on March 11, 1926. A new "decision" of the Council was made upon the latter date supplementing the decision of September 27, 1924, confirming the new

[3] For text of the rules annexed to Article 421 of the Treaty of Sèvres, see House of Commons, Sessional Papers, 1920, LI, p. 609, Cmd. 964.

[4] L.N.T.S., XXXV, p. 18; House of Commons, Sessional Papers, 1924-1925, XXX, p. 587, Cmd. 2370, Treaty Series No. 17 (1925).

[5] L.N.T.S., XXXV, pp. 36-48, 104-109, 132-134, and 146-151; House of Commons, Sessional Papers, 1924-1925, XXX, p. 587, Cmd. 2370, Treaty Series No. 17 (1925).

obligation.[6] By a treaty with Great Britain and Iraq signed on June 5, 1926, the boundary fixed by the Council was accepted by Turkey, with a slight alteration later approved by the Council.[7]

The Mandates Commission and Iraq to November, 1928. Up to this time, the Permanent Mandates Commission, which receives the annual reports sent by the various mandatories and examines them with a view to giving advice to the Council, had not considered any report on Iraq. At its 6th session (June 26-July 10, 1925), it thought that it could not consider a report, in view of the fact that the mandate was not yet a year old. At its 7th session (October 19-30, 1925), however, it had before it for intended examination the report for the period from April, 1923, to the end of 1924. In view of the dispute over the Mosul boundary, at that time in the hands of the Council, the Commission decided to adjourn consideration of the report to a later session. The matter was put on the agenda of the 9th session (June 8-25, 1926), the 8th session having been devoted entirely to Syrian troubles. The Commission decided not to consider the report before it, however, in view of the fact that it would have the report for 1925 if it waited until the autumn session. At its 10th session (November 4-19, 1926), therefore, the Commission for the first time examined a report on Iraq. As a matter of fact, it considered both the 1923-24 report and the 1925 report, in the presence of the high commissioner for Iraq, Sir Henry Dobbs, who acted as the British accredited representative.[8]

In its report on its 10th session, the Commission pointed out to the Council that it had examined the reports on Iraq for the years 1923-24 and 1925, and that it "did not consider that it should examine reports anterior to this period." It commented on the importance of the treaty of alliance, by which it thought "the independence of Iraq was implicitly recognized." The statement made by the high commissioner preliminary to the examination of the reports enabled the Commission "to form a correct im-

[6] Official Journal, 1926, 187-192, 502-503, 550-551. For text of the treaty, see also House of Commons, Sessional Papers, 1926, XXX, p. 91, Cmd. 2662, Treaty Series No. 10 (1926).

[7] Official Journal, 1926, pp. 858-859; L.N.T.S., LXIV, pp. 381-391; House of Commons, Sessional Papers, 1926, XXX, p. 309, Cmd. 2679, Turkey No. 1 (1926).

[8] Permanent Mandates Commission, Minutes (hereafter cited P.M.C., Mins.), 10, pp. 16-17, 44-78.

pression'' of events in Iraq and to understand clearly the position of affairs. The Commission examined carefully the fundamental provisions of the constitution of Iraq[9] and noted the statement of British policy as ''Iraq governed by Iraqi, and by Iraqi helped by small numbers of British advisers and inspectors.'' A favorable impression was made upon the Commission by this statement and others concerning the success with which the representative system had been introduced.[10]

The Commission examined the matter of Kurdish administration ''with particular care,'' and hoped that full information would always be supplied concerning it. There was no occasion to carry out the recommendation of the Mosul Commission[11] to appoint a League delegate to insure the protection of all sections of the population. Interest was expressed in the problem of crown lands, the tribal disputes legislation, the reform of land taxes, the decision as to Iraq's share of the Ottoman Public Debt, and various matters of public finance. Further details were requested on certain of these matters, as well as on labor laws, education, and international conventions applicable to Iraq. The Commission requested action to define the Iraq boundary with Syria, and hoped that relations with Turkey would improve.[12]

At the 12th session of the Commission (October 24-November 11, 1927), the accredited representative made a long statement concerning the major facts and policies of interest, as supplementary to the 1926 report.[13] This statement permitted the Commission, according to its report to the Council, ''to obtain a more intimate knowledge of the general situation'' than it had hitherto obtained. More information was requested, however, concerning the measures taken in pursuance of the recommendations of the Mosul Commission relative to the protection of minorities; the lessened expenditure for public health; and the application of the economic equality principle. The Commission regretted that relations with Persia were attended with difficulties. It would

[9] P.M.C., Mins., 10, p. 183. For text of the Iraqi constitution of 1924, promulgated in 1925, see League of Nations Document C.49.1929.VI. (C.P.M. 834).

[10] P.M.C., Mins., 10, p. 183.

[11] *Ibid.*, pp. 183-184. For details, see *Question of the Frontier Between Turkey and Iraq: Report Submitted to the Council by the Commission.* League of Nations Document C.400.M.147.1925.VII.

[12] P.M.C., Mins., 10, p. 184.

[13] *Ibid.*, 12, pp. 16-21.

gladly receive a comprehensive survey of developments in the economic life of the country, and more complete information on labor recruiting, transportation, and contracts. The continued increase of expenditures on education was noted with satisfaction.[14]

The Commission was faced at its 14th session (October 26-November 13, 1928) with the problem of what to say about the treaty of December 14, 1927, between Great Britain and Iraq, printed as an annex to the 1927 annual report.[15] It took cognizance of the treaty, but decided not to comment upon it until requested by the Council to do so. The treaty was later abandoned by the British government, and was never ratified. The Commission noted with satisfaction the progress made in settling the nomadic tribes. It repeated its regrets concerning relations with Persia and hoped for immediate improvement. The postponement of the definition of the frontier with Syria was also noted. Hope was expressed that measures to improve the health services would be actively pursued, and that every effort would be made to promote religious and political toleration in schools and training colleges. More information was desired on the financial position of the territory. The Commission believed that the Iraqi government did not violate its economic equality obligations by the Anglo-Persian Oil Company's concession. "The Commission fully relies upon the Iraq government to make use of its rights under the concession in favor of the territory in the way it may consider the best possible." In view of the growing industrialization of the country, the Commission thought that much advantage might be gained if the experience of the mandatory in regard to the regulation of conditions of labor were made more completely available to the Iraqi government. Hope was expressed that the administration of Auqaf (Wakf) property (certain religious property) might be improved.[16]

The Commission examined a petition of the Bahai Spiritual Assembly of Bagdad and, after careful consideration of its contents and the evidence made available to it, recommended that "the Council should ask the British government to make representations to the Iraq government with a view to the immediate

[14] *Ibid.*, pp. 200-201.

[15] For text, see House of Commons, Sessional Papers, 1927, XXVI, p. 229, Cmd. 2998.

[16] P.M.C., Mins., 14, pp. 270-271.

redress of the denial of justice from which the petitioners have suffered.'"[17] In his report to the Council at its meeting of March 4, 1929, the *rapporteur* called attention to the denial of justice to the Bahais, which took the form of a dispossession of property without legal means of recovery, attributable "solely to religious passion." Upon his recommendation, the Council accepted the Commission's conclusions and instructed the secretary-general of the League to acquaint the British government with the contents of the Commission's recommendation.[18]

The Proposal to Admit Iraq to the League. On November 4, 1929, two days before the Commission was scheduled to meet for its 16th session, November 6-26, 1929, a letter was sent from the British Foreign Office to the secretary-general of the League for circulation among the members of the Council announcing the decision of the British government not to proceed with the treaty of December 14, 1927. "They propose, however, in accordance with Article 3 (1) of the Anglo-Iraqi treaty of January 13, 1926, . . . to recommend Iraq for admission to membership of the League of Nations in 1932."[19]

The Mandates Commission began animated discussions concerning Iraq's admission to the League on the very first day of its 16th session, November 6, 1929. The chairman invited the Commission to decide upon the procedure to be followed in the examination of the accredited representative during the consideration of the report for 1928, then before the Commission. A difference of opinion developed relative to the degree to which the Commission should attempt to decide upon Iraq's political maturity, but it was agreed that it should put questions to the accredited representative with a view to having as much light as possible shed on Iraq's self-governing ability. In its report to the Council, the Commission commended the "very full and clear statement" of the 1928 report concerning the political situation, and the care with which the accredited representative had replied to its questions. It was convinced that the British representatives in Iraq had managed in the last few years "to promote tranquility and progress," an achievement "worthy of the highest praise." This progress had been made despite the distrust of a

[17] *Ibid.*, p. 276.
[18] Official Journal, 1929, pp. 506-508.
[19] *Ibid.*, p. 1838.

certain section of local opinion, and it was obvious that "the Iraq government could not have done as much on its own initiative, and with its own resources." It was, therefore, desirable to have the mandatory indicate in future reports how much of the result was due to the British officials and how much to the Iraqi government. "It would be well that the extent to which the Iraqi authorities are dependent upon British support, the efforts made, the opposition encountered and the results achieved in each sphere, the difficulties which have been settled and those which have still to be overcome, should be described as far as possible."[20]

The Commission regretted the unsatisfactory state of Iraq's relations with Nejd, while it expressed great satisfaction at the improved relations with Persia.[21] It hoped that the inadequacy of the health service would be remedied by increased appropriations. It welcomed the steps taken in respect of the wrong done to the Bahai sect. It thought that any new oil concessions should contain conditions insuring the due development of Iraq's oil resources. It was to be hoped that early enactment would be given proposals to regulate the conditions of labor. Funds for education needed to be increased, and the contemplated changes in the recruitment and training of teachers were desirable.[22]

At the time when the Council considered the report on the Commission's 16th session, it requested the Commission to investigate and report on the general conditions to be fulfilled before the mandate régime could be brought to an end in a mandated territory. Although this question very obviously was raised by the special case of Iraq, the Council made no reference to a desire that the Commission consider anything but the general principles.[23]

When the Commission met for its 18th session (June 18-July 1, 1930), the 17th session having been devoted entirely to Palestine, M. van Rees presented to its members some considerations on the admission of Iraq to the League. His principal contention was that since the Iraqi constitution, the British treaties, and other documents recognized Iraq's sovereignty, since that coun-

[20] P.M.C., Mins., 16, p. 204.

[21] Persia extended recognition to the Iraqi government in April, 1929.

[22] P.M.C., Mins., 16, pp. 204-205.

[23] Resolution adopted on January 13, 1930. Official Journal, 1930, p. 77.

try had the governmental system of an independent state, and since the mandatory had said it was ready for independence, it would be practically impossible to maintain the opposite point of view, "even though certain isolated facts might be mentioned which detract somewhat from the general assurance given by the mandatory."[24] Suggestions were offered as to the conditions upon which Iraq's admission to the League should be made contingent, such as guarantees in the interest of foreigners in judicial, religious, economic, commercial, and industrial matters, and in the interest of racial, linguistic, and religious minorities in Iraq.[25] The Commission decided to postpone consideration of M. van Rees's suggestions.

The Treaty with the United States. On January 9, 1930, there was signed in London an important treaty between Great Britain and Iraq on the one side and the United States on the other.[26] By this treaty, the United States recognized the validity of the various decisions and treaties defining the régime of special relations between Great Britain and Iraq and the League of Nations. To the United States and its nationals were guaranteed "the rights and benefits" secured under the treaties and decisions to members of the League and their nationals. Vested American property rights in Iraq should be respected and in no way impaired. United States nationals should be permitted freely "to establish and maintain educational, philanthropic, and religious institutions in Iraq, to receive voluntary applicants and to teach in the English language," subject to local regulations for the maintenance of "public order and public morals." Negotiations should be undertaken for concluding an extradition treaty between the United States and Iraq. No modification of the aforementioned special relations other than Iraq's admission to the League or the expiration of the British treaties should make any change in the rights of the United States without its consent. On the termination of the special relations as contemplated in the 1922 and 1926 treaties, Iraq and the United States should enter into negotiations in regard to their future relations and the rights of their respective nationals. Pending the conclusion of such an agreement, "the nationals, vessels, goods, and aircraft of the United

[24] P.M.C., Mins., 18, pp. 170-171.

[25] *Ibid.*, pp. 170-174.

[26] Cmd. 3503, United States No. 1 (1930).

States and all goods in transit across Iraq, originating in or destined for the United States," should receive most-favored-nation treatment on condition of reciprocity, subject to certain specified exceptions on both sides.

The Anglo-Iraqi Treaty of Alliance of 1930. Following up its intention to propose the admission of Iraq to the League in 1932, the British government initiated negotiations in April, 1930, which led to the signing of a new treaty with Iraq on June 30, 1930.[27] This treaty has for its purpose the definition of Anglo-Iraqi relations after the termination of the mandate. Certain of the provisions of this treaty have come under the critical scrutiny of the Mandates Commission, as we shall indicate in more detail below.

The treaty provides that perpetual peace and friendship shall exist between the two countries, and that to consecrate this friendship and the good relations and understanding of the parties, "a close alliance" shall be established. There shall be "full and frank consultation between them in all matters of foreign policy which may affect their common interests." Each party agrees "not to adopt in foreign countries an attitude which is inconsistent with the alliance or might create difficulties for the other party thereto." Any dispute between Iraq and a third state involving the risk of a rupture shall be the subject of concerted action with a view to its settlement in accordance with the Covenant and other applicable international obligations. In case of war in spite of these efforts, the party involved shall receive the immediate aid of the other as an ally. In the event of an imminent menace of war, the parties will concert as to measures of defense. The aid of Iraq to Great Britain in the event of war or the imminent menace of war "will consist in furnishing to His Britannic Majesty on Iraq territory all facilities and assistance" in its power, "including the use of railways, rivers, ports, aërodromes, and means of communication." The Iraqi government accepts responsibility for the maintenance of internal order, and even for defense from external aggression except as just provided. Iraq recognizes that "the permanent maintenance and protection in all circumstances of the essential communications of His Britannic Majesty is in the common interest" of both parties.

[27] Cmd. 3797. The treaty was ratified on January 26, 1931.

Therefore, sites for air bases to be selected by the British government are to be granted to it near Basra and west of the Euphrates, and troops may be maintained at such bases, with the understanding that their presence shall not constitute an occupation or prejudice in any way the sovereign rights of Iraq. The responsibilities assumed by the British government toward Iraq in the 1922 and 1926 treaties shall "automatically and completely come to an end" upon the termination of the mandate, and such responsibilities will devolve upon Iraq in so far as they continue at all. All other responsibilities assumed by any other international instrument shall likewise devolve upon Iraq. The treaty shall be deemed to contain no provision in conflict with the rights and obligations which devolve, or may devolve, upon either party under the Covenant or the General Pact for the Renunciation of War. Differences relative to the application or interpretation of the treaty not settled by direct negotiation shall be dealt with in accordance with the provisions of the Covenant. The treaty is to remain in force for twenty-five years from the date of its entry into force. After the lapse of twenty years, either party may begin negotiations for a new treaty, which shall provide for the continued maintenance and protection in all circumstances of the essential communications of the British government. In case of disagreement on this matter, the difference will be submitted to the Council of the League.

An annex to the treaty provides that the strength of the British forces maintained in Iraq shall be determined by the British government from time to time after consultation with the Iraqi government. Forces shall be maintained at Hinaidi for five years after the entry into force of the treaty to enable Iraq to organize the necessary forces to replace them. The British government may maintain forces at Mosul for a maximum period of five years. Thereafter it may station forces only as provided in the treaty, as indicated above. The immunities and privileges in jurisdictional and fiscal matters shall continue to be enjoyed by the British forces and arms as previously. All possible facilities for the movement, training, and maintenance of the British forces shall be provided by the Iraqi government. The latter also undertakes to provide special guards for the protection of the British air bases at British expense. Iraq shall be furnished all possible

facilities by the British government, at Iraq's expense, in relation to naval, military, and aëronautical instruction of Iraqi officers in the United Kingdom, and be provided with arms, ammunition, equipment, ships, and aëroplanes of the latest available pattern for the Iraqi forces, as well as with British naval, military, and air force officers to advise the Iraqi forces. The Iraqi government will not have recourse to foreign military instructors who are not British subjects, or send the personnel of its forces to military schools, etc., other than in the British Empire, unless the latter are unable to accommodate them. The armament and essential equipment used by the Iraqi forces shall not differ in type from those of the British forces. Freedom of movement for the British forces, their supplies, arms, and equipment, and the storage of material are safeguarded. A general permission is extended to British ships to visit the Shatt-al-Arab, on the understanding that the Iraqi government shall have prior notice of visits to its ports.

The New Judicial Agreement. At the time of the signature of the new treaty of alliance, June 30, 1930, there was also initialed a new judicial agreement to replace that of March 25, 1924. By a resolution of September 24, 1930, the Council requested the Mandates Commission to examine this proposed agreement and to advise the Council concerning it. This the Commission did at its 19th session (November 4-19, 1930), and reported that it saw no objection to the substitution of the new agreement for that of 1924 if the consent of the fourteen states enjoying privileges under the prior agreement could be secured.[28] This stand was approved by the Council on January 22, 1931,[29] and on March 4 following, the consent of the states concerned having been secured, the new agreement was signed in Bagdad.[30]

The Mandates Commission and Iraq, November, 1930. Resuming the narrative of the Mandates Commission's consideration of Iraq's progress, we note that when examining the 1929 report at its 19th session (November 4-19, 1930), the Commission paid special attention to the question of the degree of political maturity already achieved. Although the annual report was supplemented to a considerable extent by the replies of the accredited

[28] P.M.C., Mins., 19, p. 206.
[29] Official Journal, 1931, pp. 179-186.
[30] *Ibid.*, p. 785.

representative, the Commission felt that it did not yet have sufficient information "to begin to formulate an opinion on the progress" of Iraq as a result of eight years under mandate administration. It therefore repeated the recommendation of the 16th session as to the supply of information on how much of the progress which had been made was due to British officials and how much to the Iraqi government. It was confident that, since the mandatory had made its desire clear to insure complete independence for Iraq in 1932, it would do everything to make the general statement which had been promised by the accredited representative "as comprehensive and detailed as possible, since this is essential for the Commission's examination of the question." The Commission desired to point out to the Council at once, however, that the value of its opinion "on so serious and complicated a question must necessarily be conditioned and limited by the nature of its functions and by its procedure."[31] The Commission made this last remark because of its necessary reliance upon the information furnished to it by the mandatory.

The Commission considered it essential that respect for the rights of racial, linguistic, and religious minorities should be insured under all circumstances. Such respect, moreover, was viewed as constituting one of the main guarantees of security, public order, and prosperity. The Commission expressed particular concern for the position of the Kurdish minority, and recommended to the Council that it request the mandatory to see that the legislative and administrative measures designed to secure the position of the Kurds were promptly put into effect and properly enforced. It also recommended that the Council consider the advisability of taking measures to insure the position of the Kurds after the withdrawal of the mandatory. The Commission felt that the statement of the accredited representative that Iraq would be prepared to accept international obligations safeguarding the rights of minorities might dispel the anxiety held for their future. Regret was expressed, however, that redress had not yet been given to the Bahai sect, despite the Council's resolution of March 4, 1929, in favor of such redress. The observations made at the 16th session relative to increased expenditure for public health and education, and to safeguarding Iraqi interests in oil concessions, were repeated.[32]

[31] P.M.C., Mins., 19, pp. 207, 142. [32] *Ibid.*, pp. 207, 208, 212.

When the report of the 19th session was discussed in the Council, on January 22, 1931, the British representative, Mr. Arthur Henderson, made a statement promising a special review of Iraq's progress for the consideration of the 20th session of the Commission.[33] This promised review of Iraq's progress reached the Secretariat of the League on May 13, 1931, and was in the hands of the members of the Commission before the June session began. This document is the first of its kind, and is unique in the purpose for which it was prepared. It is no less than an attempt of a guardian government to present to the whole world proof of its contention that its ward is now ready for full nationhood.

The Special Report, 1931. The special report[34] professed to attempt to present "a general picture" of the progress made by Iraq during the period since Great Britain had been selected mandatory at the San Remo Conference in April, 1920. To this attempt are devoted some 330 pages. The aim which the mandatory had set for itself from the beginning was "the establishment at the earliest possible date of a fully independent state of Iraq inspired with the spirit of the League of Nations, animated by a sincere desire to observe its international obligations, and ready to accept not only the privileges but also the responsibilities involved in accession to the Covenant." During the period from 1920, the mandatory had kept constantly in mind the principle that the well-being and development of Iraq formed a sacred trust of civilization. But the mandatory had never "regarded the attainment of an ideal standard of administrative efficiency and stability as a necessary condition either of the termination of the mandatory régime or of the admission of Iraq to membership of the League of Nations." The mandatory had not conceived that Iraq "should be from the first able to challenge comparison with the most highly developed and civilized nations of the modern world. What they have aimed at is the setting up, within fixed frontiers, of a self-governing state enjoying friendly relations with neighboring states and equipped with stable legislative, judicial, and administrative systems and all the working machinery of a civilized government." Confidence was expressed that

[33] Official Journal, 1931, pp. 184-186.

[34] *Special Report . . . on the Progress of Iraq During the Period 1920-1931* (Colonial No. 58, 1931).

such a goal will have been achieved when the time comes for Iraq's admission to the League, and that, with the protection afforded by League membership, Iraq can and will stand alone.[35]

The special report then pointed out that the changes in the treaty relations of the mandatory and Iraq had necessitated at each step practical readjustments in the conduct of administration to give more responsibility to Iraqis. This, in turn, had made possible further changes in the relations of mandatory and mandated territory. Throughout the period under review, "a definite political impulse" had been evident. All responsible Iraqis had shown from the first "a marked impatience of mandatory control and a fervent desire for independence." A continual pressure of nationalism had been exerted to have the mandatory control relaxed. Such desire for independence was not "an unhealthy sign," since it demonstrated that "Iraqis generally are willing and eager to accept the burden and responsibilities of self-government and are not content to rest supinely while foreigners discharge those responsibilities on their behalf." Without this keen nationalist spirit, "the grant of independence would be as unprofitable as it would be unmerited." This spirit had, it was true, hampered the mandatory's administration and had to some extent retarded Iraq's material progress. But with the withdrawal of the mandatory this impediment will disappear, and it is reasonable to hope that "the machinery of government may work more smoothly."[36]

The development of the relations of Britain and Iraq is reviewed in its details. It became evident to the British government in 1929[37] that Iraq had made such great progress during the past few years in "internal security, sound public finance, and stable administration" that, in the "absence of some really serious and unexpected setback," it would be ready for League membership in 1932. Hence, the communication of November 4, 1929. This announcement restored Iraqi confidence in British intentions and greatly eased the relations of the two countries. On September 14, 1929, the king of Iraq was informed of the decision to recommend his country for League membership, and was told that it was expected that a new treaty would be drawn up before 1932

[35] *Special Report*, pp. 10-11, 287-288.

[36] *Ibid.*, pp. 11-12.

[37] After the accession to power of Mr. MacDonald's Labor government.

to define the future relations of the two countries.[38] As we have seen, the treaty was negotiated in the following year.

The special report then discussed in some detail the position of the British high commissioner, the position and number of British officials, and the political working of the system. In answer to the Commission's request for information concerning how much of Iraq's progress was due to British and how much to Iraqi officials, the report detailed the steps by which the high commissioner had changed from the constitutional head of the state in full charge of the government to the position of a privileged foreign representative. Likewise, the British officials had been permitted increasingly to become the servants of the Iraqi government, and the control exercised over them by the high commissioner had been accordingly relaxed. The high commissioner informed all British officials in 1930 that his government desired that "the real, as well as the ostensible, control of administration" should be left in Iraqi hands. The number of British officials dropped from 2,906 in November, 1920, to 1,839 in January, 1923, and to 234 in September, 1929. At the date of the special report, in the first half of 1931, there were thirty-eight British officials in advisory posts and 158 British and Indian officials in executive posts—the great majority of the executive posts being purely technical.[39]

The system of government established under the constitution of 1924 (amended in 1925) is then described in detail. Iraq's foreign affairs are examined, and the conclusion is reached that Iraq's relations with its neighbors are friendly. The question of army and defense is gone into fully, to show that Iraqi troops have proved their ability to take the field with no further assistance from the British than normal air support, and that Iraq will have full responsibility for internal order and, subject to the treaty of 1930, for defense from external aggression.[40]

As to internal administration, the whole country, except certain parts of Kurdistan, was "settled and peaceful." An efficient police under Iraqi control, but with a small British inspectorate, maintained public security. The health service was well organized and efficient, with about 80 per cent Iraqi personnel. In municipal

[38] *Special Report*, pp. 19-20.
[39] *Ibid.*, pp. 21-25.
[40] *Ibid.*, pp. 30-48.

government, recent developments had included the increase of central supervision over expenditures and the laying before Parliament of a comprehensive measure calculated to put municipal affairs "upon a satisfactory basis."[41]

The administration of justice is a matter of great importance in Iraq, and the special report gladly pointed to the recently instituted equality of treatment of Iraqis and foreigners and the progress made in enacting up-to-date legislation. The judicial system is described in great detail, and it is pointed out that British judges will supervise the whole judicial system in future, under the provisions of the new judicial agreement. The law of Iraq is very backward in some respects, and much work will have to be done to rid the country of the "incubus" of much inherited legislation. But progress is constant, and as the Iraqi parliament becomes increasingly acquainted with proper methods of procedure and establishes a tradition of modern parliamentary practice, still more rapid progress may be expected.[42]

In the field of finance, optimism for the future is expressed. Iraq's share of the Ottoman Public Debt has been practically extinguished, and contributions have been made to railway development and reconstruction. The recent conclusion of certain oil negotiations insure to Iraq an additional minimum revenue of £400,000 annually. The administration of customs and excises is sound. On the whole, the finances of the country are on a satisfactory basis, despite some tangles which still exist in the revenue system.[43]

Vast quantities of data are given concerning communications and public works, agriculture, irrigation, and commerce and industry. The general conclusion to be drawn is that in respect to these matters there exists the basis for a self-governing state. Education is making progress, the social conditions of the people are being greatly improved, although the status of women and the stage of labor legislation are not very advanced.[44]

The situation of minorities is viewed by the British government with less alarm than it is by the Mandates Commission or by the minorities themselves. "The position of all minorities in Iraq is at present adequately safeguarded in the constitution,"

[41] *Ibid.*, pp. 48-54.
[42] *Ibid.*, pp. 76-84.
[43] *Ibid.*, pp. 84-113.
[44] *Ibid.*, p. 132 ff.

and until the announcement of an intention to recommend Iraq for League membership "no general complaint was made as to their treatment" by the Iraqi government. There was every reason to believe that the Iraqi government "will be prepared in 1932 to give similar guarantees to those given by certain other states which have been admitted to [League] membership within the last few years."[45]

The Commission, the Council, and Iraq, 1931. At its 20th session (June 9-27, 1931), the Commission examined the special report in considerable detail. Prior to its meetings with the accredited representative, it had a general discussion among its own members. The important point was argued whether the mandatory would be wholly responsible for the results of the emancipation of Iraq, or whether the Commission would have to share that responsibility. The view seemed to have the greater support that the Council had to shoulder a responsibility in approving the mandatory's proposal, and that the Commission could not evade responsibility as the Council's advisory body. The fact that the Commission has to rely upon the facts given by the mandatory was impressive to some of the Commission's members.[46]

The high commissioner presented a long statement to the Commission in which he went over much of the ground of the special report, and brought its information up to date. In reply to questions put by members of the Commission as topic after topic was taken up, he gave much additional information. The discussions which took place between him and the members of the Commission served well to bring out the points on which doubt still might be entertained as to Iraq's self-governing ability and the precise attitude of the British government on these points.

The matter which led to the most frequent expression of anxiety in the Commission was the fate of minorities, once British influence is withdrawn. Several members felt that factors exist within Iraq which make the future of these minorities uncertain if left to the mercies of an Arab Iraqi government. The accredited representative took a more optimistic view of the situation, and told the Commission that the Iraqi government would be tolerant of minorities. With regard to a suggestion that

[45] *Ibid.*, p. 287. [46] P.M.C., Mins., 20, pp. 115-116.

a League commissioner might be sent to reside in Iraq upon the termination of the mandate to supervise the fulfilment of the minorities guarantees to be given by Iraq, the accredited representative took a strongly critical position. He thought the Iraqi government would view this "as a derogation of sovereignty, and as an indication that it was not trusted to implement whatever guarantees it might have given." It would be considered an unnecessary and provocative measure. Moreover, it "would serve to perpetuate and emphasize the artificial division" which had recently sprung up between certain minorities, and would tend to preserve existing suspicions and might even promote new animosities. It would defeat its own object by keeping alive a separatist spirit, whereas such groups as the Kurds must be brought to throw in their lot with the Arabs. The Iraqi government would oppose the appointment of a League commissioner, and so would the British government.[47]

Some members of the Commission pointedly raised the issue of Iraq's self-governing ability in reference to judicial organization. Measures had been taken in the new judicial agreement to safeguard the rights of foreigners, but was the judicial system adequate to the dispensation of justice to Iraqis? Certain facts, such as the denial of justice to the Bahais, seemed to make the answer doubtful. The accredited representative took the firm position that all the necessary guarantees were present, and that these could be perpetuated by the Council when it came to terminate the mandate. British judges in certain of the courts would likely be continued. The accredited representative did not think that it was fair to put the situation in this way: Iraq is able to stand alone. Why? Because British judges are present and their number will be increased.[48]

Doubt was expressed also in the Commission concerning the adequacy of the police force and its immunity from political influence. The British representative emphasized the point made in the special report that perfection in government could not be asked of a mandated territory as a condition of its emancipation. The Covenant seemed to contemplate only self-governing ability, and that meant to be able "to govern itself without external assistance." The Iraqi state, "given the support and inspiration

[47] *Ibid.*, p. 130.

[48] *Ibid.*, pp. 138-139.

of membership of the League, is now fit to stand alone; it is now capable of self-government, indeed for all practical purposes it is governing itself; it has shown itself jealous of the sanctity of international engagements.''[49] The British government was willing to agree that ''the moral responsibility'' for Iraq's failure to fulfill the trust placed in it would rest upon the British government, ''which would not attempt to transfer it to the Mandates Commission.''[50] This categorical statement seemed to give marked relief to the members of the Commission, who appeared to fear acutely that such moral responsibility would be permitted to fall upon the Commission's shoulders.

Many other matters were discussed with the accredited representative, but enough has already been presented to indicate the line taken in the discussions. In turning to the task of making its report to the Council, the Commission found itself confronted by the very delicate question of whether it should say, as a majority, or possibly all, of its members felt, that as far as the Commission could judge from the information at its disposal, it could see no objection to the British proposal to terminate the mandate, or whether it should refrain from expressing its opinion until called upon to do so by the Council. After listening to forceful arguments on both sides, it finally decided, with one dissentient vote, to make the following observation:[51]

> In the course of this session, the Commission had occasion to examine the mandatory power's report made on the progress made by Iraq between 1920 and the present day. This examination was of particular interest, inasmuch as the Commission enjoyed the help of Sir Francis Humphrys, the high commissioner, and his chief assistant, Major H. W. Young, who gave very valuable particulars supplementary to those contained in the report.
>
> So far as its normal sources of information permit, the Commission is thus now in a position, to the extent compatible with the nature of its functions and its procedure, and subject to the information which has been promised to it, to express its views on the mandatory power's proposal for the termination of the Iraq mandate. As soon as the Council has reached a decision as to the general conditions which must be fulfilled before a mandate can be brought to an end, the Commission will be ready to submit to the Council its opinion on the British proposal regarding Iraq, after examining that proposal in the light of the Council's resolution.

[49] *Ibid.*, p. 124.

[50] *Ibid.*, p. 134.

[51] *Ibid.*, pp. 233, 160.

The Council's Resolution of September 4, 1931, and the Commission's Recommendations of November, 1931. On September 4, 1931, the Council made its decision concerning the general conditions to be fulfilled before a mandate can come to an end, and called upon the Commission to submit its opinion on the British government's proposal to emancipate Iraq, in the light of the decision just made.[52] The Commission gave the problem most careful consideration at its 21st session (October 26-November 13, 1931), and came to the conclusion that the facts upon which it was forced to rely, namely, those furnished by the mandatory, justified a judgment that Iraq was capable of fulfilling the conditions contained in the Council decision of September 4. The Council had, upon the recommendation of the Commission as a result of its 20th session, decided that a territory should fulfill the following *de facto* conditions:[53] (1) it must have a settled government and an administration capable of maintaining the regular operation of essential government services; (2) it must be capable of maintaining its territorial integrity and political independence; (3) it must be able to maintain the public peace throughout the whole territory; (4) it must have at its disposal adequate financial resources to provide regularly for normal government requirements; (5) it must possess laws and a judicial organization which will afford equal and regular justice to all. The Commission took up these conditions one by one to see how Iraq measured up to them. It had the assurance of the accredited representative that condition 1 was fulfilled, which assurance it accepted, in the absence of any information to the contrary. Condition 2 had to be taken in a loose sense, since Iraq manifestly did not have sufficient force to repulse an aggressor. Considering, however, the securities afforded by membership in the League, and the guarantees of British aid in case of war under the provisions of the treaty of 1930, the Commission was of the opinion that Iraq could satisfy this requirement. Condition 3 seemed to the Commission to be satisfied by the present situation in Iraq, and the accredited representative assured it that the Iraqi army and police would be sufficient to cope with anything that could reasonably be foreseen. The soundness of the financial situation

[52] Official Journal, 1931, pp. 2056-2058.
[53] *Ibid.*, p. 2057.

and the latent resources of the country seemed to justify the belief that Iraq satisfied condition 4. As to condition 5, the Commission believed that the laws and judicial system are such that uniform justice will be afforded to all, provided certain readjustments and improvements are made and guarantees are given at least equal to those of the judicial agreement of March 4, 1931.[54]

In its decision of September 4, 1931, the Council stipulated that a mandated territory, to be emancipated, should be called upon to insure and guarantee:[55]

(*a*) The effective protection of racial, linguistic, and religious minorities;

(*b*) The privileges and immunities of foreigners (in the Near Eastern territories), including consular jurisdiction and protection as formerly practiced in the Ottoman Empire in virtue of the capitulations and usages, unless any other arrangement on this subject has been previously approved by the Council of the League of Nations in concert with the Powers concerned;

(*c*) The interests of foreigners in judicial, civil, and criminal cases, in so far as these interests are not guaranteed by the capitulations;

(*d*) Freedom of conscience and public worship and the free exercise of the religious, educational, and medical activities of religious missions of all denominations, subject to such measures as may be indispensable for the maintenance of public order, morality, and effective administration;

(*e*) The financial obligations regularly assumed by the former mandatory power;

(*f*) Rights of every kind legally acquired under the mandate régime;

(*g*) The maintenance in force for their respective duration, and subject to the right of denunciation by the parties concerned, of the international conventions, both general and special, to which, during the mandate, the mandatory power acceded on behalf of the mandated territory.

In the entire history of its consideration of the case of Iraq, the Commission has manifested a desire to require rather strong guarantees of Iraq as to minorities. In its recommendation to the Council, therefore, the following statement is not unexpected:[56]

The Commission is of the opinion that the protection of racial, linguistic and religious minorities should be ensured by means of a series of provisions inserted in a declaration to be made by the Iraqi government before the Council of the League of Nations and by the acceptance of the rules of procedure laid down by the Council in regard to petitions concerning minorities, according to which, in particular, minorities them-

[54] P.M.C., Mins., 21, pp. 222-223.

[55] Official Journal, 1931, pp. 2057-2058; P.M.C., Mins., 21, p. 223.

[56] P.M.C., Mins., 21, p. 223.

selves, as well as any person, association, or interested state, have the right to submit petitions to the League of Nations.

The text to be drawn up would contain the general provisions relating to the protection of minorities in the European treaties. Further measures might be required of Iraq, in the Council's discretion. The guarantees undertaken might be modified only by a majority vote of the Council of the League. Any member of the Council would have the right to bring to the attention of the Council "any infraction or danger of infraction" of any of the stipulations, "and the Council could thereupon take such action and give such directions as it might deem proper and effective in the circumstances."

The guarantees in favor of foreigners should be based on the judicial agreement of March 4, 1931. The majority of the Commission thought it advisable that some of the foreign judges under this arrangement should be other than British. In the case of foreign nationals not enjoying the rights under the capitulations, Iraq should undertake to safeguard their interests in civil and criminal judicial matters.[57]

Formal undertakings should be made to satisfy the other demands listed in the Council decision of September 4. Furthermore, Iraq should undertake to grant most-favored-nation treatment to members of the League, on condition of reciprocity, and for a period to be decided upon by Iraq and the Council. Iraq should undertake to permit submission to the Permanent Court of any difference between itself and a member of the League as to the interpretation of these undertakings.[58]

As a final observation, the Commission pointed out to the Council that an examination of the treaty of alliance of June 30, 1930, indicated that "certain provisions . . . were somewhat unusual in treaties of this kind," but that "the obligations entered into by Iraq towards Great Britain did not explicitly infringe the independence of the new state."[59]

Iraq's Declaration before the Council and Admission to the League. On January 28, 1932, the Council, upon the recommendation of the *rapporteur,* M. Marinkovitch (Yugoslavia), approved the Commission's recommendations as the basis of its action in

[57] *Ibid.*, p. 224.
[58] *Ibid.*
[59] *Ibid.*, p. 225.

bringing about the emancipation of Iraq.[60] A Council committee was appointed to consist of the *rapporteurs* for minorities questions, questions of international law and mandates, and the representative of Great Britain on the Council, "to prepare, in consultation with the representatives of the Iraqi government, and, if necessary, with a representative of the Permanent Mandates Commission, a draft declaration covering the various guarantees recommended in the report of the Permanent Mandates Commission, and to submit that draft to the Council at its next session."[61] The Committee held fifteen meetings, from January 30 to February 10, and from April 25 to May 7. The prime minister of Iraq and M. Pierre Orts, member of the Permanent Mandates Commission, coöperated with the Committee in an advisory capacity. The report and the draft Declaration proposed by the Committee were adopted by the Council on May 19, 1932.[62] On July 13, 1932, the Secretary-General was able to inform the Council that "the government of the kingdom of Iraq has submitted to him, duly signed, the Declaration approved by the Council's resolution of May 19, 1932, and containing the guarantees to be given by Iraq, together with the instrument of ratification of this Declaration, which has been deposited in the archives of the Secretariat."[63] On October 3, 1932, Iraq was welcomed by the Assembly into the League as its fifty-seventh member.[64]

Certain features of the Declaration signed by Iraq deserve brief mention.[65] The first ten articles of the Declaration constitute the first chapter, and concern the protection of minorities. Iraq's undertakings in regard to minorities are recognized as "fundamental laws of Iraq" over which no law, regulation, or official action shall take precedence. "All Iraqi nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion." Freedom of worship, of charitable endeavor, and of private educational activity shall be guaranteed to all minorities alike. In the

[60] Official Journal, 1932, pp. 471-479; text of the Council resolution is at p. 474.

[61] *Ibid.*, p. 474.

[62] For text of the Committee's report, see *ibid.*, pp. 1342-1347; for text of the Declaration, pp. 1347-1350; for the Council's discussion, pp. 1212-1216.

[63] *Ibid.*, p. 1483.

[64] Verbatim Record of the Thirteenth Ordinary Session of the Assembly, Sixth Plenary Meeting.

[65] For text of the Declaration, see Official Journal, 1932, pp. 1347-1350.

liwas of Mosul, Arbil, Kirkuk, and Sulaimaniya, the official language, side by side with Arabic, shall be Kurdish in the quadhas in which the population is predominantly of Kurdish race. In the quadhas of Kifri and Kirkuk, in the liwa of Kirkuk, the second official language shall be either Kurdish or Turkish. Other guarantees are specified in some detail. All the guarantees in favor of minorities "constitute obligations of international concern and will be placed under the guarantee of the League of Nations." They may be modified only with the assent of a majority of the League Council. Any League member represented on the Council may bring to the attention of the Council any infraction or danger of infraction of any of the guarantees, "and the Council may thereupon take such measures and give such directions as it may deem proper and effective in the circumstances." Any dispute as to the law or facts arising out of these articles, if between Iraq and a member of the League represented on the Council, may be referred by either party to the Permanent Court of International Justice.

As it finally found its way into the Declaration, the most-favored-nation clause extends to members of the League for ten years from the date of Iraq's admission, subject to reciprocity. But, should measures taken by a League member seriously affect the chief exports of Iraq to Iraq's detriment, the latter reserves the right to request the member of the League concerned to open negotiations immediately for the purpose of restoring the balance. If no agreement is reached within three months, Iraq will be freed from its obligation to give most-favored-nation treatment to that member. Iraq's undertaking does not apply to any advantages accorded by Iraq to adjacent countries in connection with frontier traffic or customs union or customs privileges granted to Turkey or to a country which was wholly Turkish in 1914.

A uniform judicial system for Iraqis and foreigners is guaranteed. The agreement of March 4, 1931, is to be maintained for ten years, except that the foreign judges need not be British in nationality. International conventions to which Iraq is a party are continued in force. Acquired rights and financial obligations must be respected or fulfilled. Freedom of conscience and worship and the free exercise of the religious, educational, and medical

activities of religious missions of all denominations and nationalities are insured and guaranteed. The provisions of the second chapter, including all those mentioned above except those relative to minorities, constitute obligations of international concern, and any member of the League may call the attention of the Council to their infraction. They may be modified only by agreement between Iraq and a majority of the League Council. Any difference that may arise between Iraq and any member of the League represented on the Council, with regard to the interpretation or the execution of these provisions, must, on application by such member, be submitted for decision to the Permanent Court.

Procedures in State Legislative Apportionment. The continued shift of population from rural areas to urban centers, as well as population movements on other than rural-urban lines, and the failure in some states to make corresponding changes in the distribution of legislative voting strength make desirable a critical examination of the existing procedures for apportionment of representation, together with a consideration of the efforts which have been made to improve these methods.

The present arrangements for apportionment in most states involve the vesting of authority to make apportionments in the legislature, with opportunity for review of the action by the courts in appropriately initiated litigation. In states where there have been more or less extensive population shifts, representatives from districts declining relatively in population have been desirous of maintaining the existing distribution of political power, resulting in a failure to act on the problem of apportionment in some cases and in an inequitable distribution of seats in others. Coupled with this situation is the fact that judicial review of legislative action on apportionment has proved an inadequate remedy against unfairness.

The failure of legislatures to carry out their constitutional duty of redistributing representation is felt most keenly in states containing large metropolitan centers. In Illinois, the apportionment act of 1901 is still in effect. The present senatorial districts of Missouri were laid out in 1901. The New York apportionment of 1917 remains in effect, although on several occasions the legislature has passed apportionment acts which the governor was unable to approve. Some results of legislative inaction in this matter are shown in Table I.

There is, of course, no judicial process available whereby a legislature may be compelled to reapportion against its will. This question has been involved in several Illinois cases, and the principles established would appear to be equally applicable to other states. A suit for mandamus to compel the members of the legislature to reapportion in keeping with the constitutional mandate met with no success.[1] A suit for injunction to restrain the state treasurer from paying the salaries and expenses of the General Assembly, alleging that the failure to reapportion had made it an illegal body, failed; the court declared that "the people have no remedy save to elect a General Assembly which will perform that duty."[2] Quo warranto proceedings questioning the right of the members of the legislature to hold office because of their failure to carry out this constitutional duty were likewise dismissed.[3] In another proceeding, the con-

[1] Fergus v. Marks, 152 N. E. 557 (1926).

[2] Fergus v. Kinney, 164 N. E. 665 (1928).

[3] People *ex rel.* Fergus v. Blackwell, 173 N. E. 750 (1930).

stitutionality of an act was questioned because the legislature which passed it had failed to carry out its duty to reapportion; but the court asserted that it had no authority to declare the General Assembly which passed the act not a *de jure* body.[4] An interesting line of attack was employed in the suit of a citizen of Illinois against the collector of internal revenue praying for an injunction to restrain the collection of the federal income tax of the complainant. It was contended, *inter alia*, that the refusal of the state legislature to reapportion deprived Illinois of a republican form of government and that the failure of the federal government to enforce the constitutional guarantee in this respect relieved citizens of Illinois from the payment of the federal income tax. This contention was held to be without merit.[5]

TABLE I. POPULATION AND REPRESENTATION OF CERTAIN METROPOLITAN AREAS IN STATE LEGISLATURES

Metropolitan Area	*Population of State (1930)*	*Percentage of House*	*Senate*
New York*	59.3	44.6	47.0
Cook County, Illinois	52.1	37.2	37.2
St. Louis City, Missouri	22.6	12.6	17.6
Wayne County, Michigan	39.0	21.0	21.8

* Figures are for the following counties: New York, Kings, Queens, Nassau, Bronx, Richmond, and Suffolk (grouped with Richmond in a senatorial district). The instances given in this table could be multiplied from all parts of the country. For figures on certain other states and on inequalities in congressional apportionments, see R. L. Mott, *Materials Illustrative of American Government*, pp. 219-226 (1925).

Judicial review of legislative apportionment has been inadequate as a remedy partly because of the absence of any precise standards by which legislation on the subject may be tested and partly because of the failure of legislatures to follow adverse judicial decisions immediately with another apportionment act. The most exact constitutional rule applied by the courts is the requirement that districts be as nearly equal in population as may be. In the application of this rule, it is admitted that exact equality of representation is unattainable; but "this difficulty cannot excuse or render lawful an apportionment which widely and unnecessarily departs from the constitutional principles. . . ."[6] "All the constitution requires is that equality in the representation of the state which

[4] People v. Claridy, 165 N. E. 638 (1929).

[5] Keogh v. Neely, 50 F. (2d) 685 (1931). The Supreme Court allowed this decision to stand in a decision (as yet unreported) handed down on May 16, 1932.

[6] Brooks v. State, 70 N. E. 980 (Ind., 1904).

an ordinary knowledge of its population and a sense of common justice would suggest. . . .'"[7] Such general statements are typical of judicial opinion on the matter, but reference to Table II will show that when the largest district is more than twice as populous as the smallest, it is probable that the apportionment act will be declared void.

The judiciary would perhaps interpret the requirement of equality of representation more strictly, as well as other limitations in connection with this matter, if the consequences flowing from nullification of

TABLE II. JUDICIAL INTERPRETATION OF REQUIREMENT OF LEGISLATIVE DISTRICTS OF EQUAL POPULATION

Apportionment Act	*Index of Inequality**	*Decision*
Ky., 1906, c. 139	7.19	Void, 100 S. W. 865
Wis., 1891, c. 482	5.61	Void, 51 N. W. 724
N.Y., 1892†	3.24	Void, 33 N. E. 827
Mass., 1916†	3.15	Void, 113 N. E. 581
Wis., 1892, c. 1	2.91	Void, 53 N. W. 35
Mich., 1891, No. 175	2.57	Void, 52 N. W. 944
N.Y., 1892, c. 397	2.28	Valid, 31 N. E. 921
Mich., 1905, No. 245	2.20	Void, 108 N. W. 749
N.Y., 1892, c. 397	2.17	Valid, 31 N. E. 921
Wis., 1892, c. 1	2.14	Void, 52 N. W. 944
Wis., 1891, c. 482	1.77	Void, 51 N. W. 724
Ind., 1903, c. 206	1.65	Void, 70 N. E. 980
Ill., 1893, p. 6	1.42	Valid, 40 N. E. 307
N.Y., 1893†	1.25	Valid, 142 N.Y. 523

* This figure was arrived at by dividing the population, or the number of qualified voters as the case might be, of the largest constituency by the population, or qualified voters, of the smallest district. Thus, the disparity in size of districts increases with the index. The question of equality was not, however, the sole issue in all of the cases. Cases and acts listed twice involved apportionment for both houses of the legislature.

† Apportionments of counties for state legislatures made by local boards in Kings county, New York, and Suffolk county, Massachusetts.

apportionment acts were less drastic. When an act is voided, the previous act ordinarily is revived, and on occasions the legislature fails to reconsider the matter for long periods of time. The hesitancy of the courts to assume responsibility for the perpetuation of the less desirable of two alternatives found expression in an opinion of the New York court of appeals in these words: "If the act of 1892 is void, the act of 1879 is also plainly void, and no election of members of the assembly should be tolerated under it. This might relegate the people to the act of 1866. . . .

[7] Ragland v. Anderson, 100 S. W. 865 (Ky., 1907).

This would be a travesty on the law and upon all ideas of equality, propriety, and justice. We are compelled to the conclusion that the act of 1892 successfully withstands all assaults upon it, and is a valid and effective law."[8]

A few instances illustrating the force of this argument are given in Table III. This factor probably explains in part the decline in the number of cases questioning the constitutionality of state apportionment acts. The most active period of litigation seems to have been from 1891 to 1900, with declines for each of the following decades.[9] Interested parties are hesitant to inaugurate proceedings which may result in making their lot worse without prospect of immediate rectification of the difficulty.

Various other methods have been employed in apportionment which suggest routes out of the difficulty. One of these involves a legislature

TABLE III. CONSEQUENCES OF JUDICIAL NULLIFICATION OF LEGISLATIVE APPORTIONMENTS

Act Invalidated	*Act Revived*	*Next Actual Apportionment*
Kentucky, 1906, c. 139	1892, c. 193	1918, c. 45
Indiana, 1895, c. 56	1885, c. 32	1897, c. 51
Michigan, 1913, no. 336	1905, no. 244	1925, no. 152

of fluctuating size, based upon the total number of votes cast in the preceding election in each representative district; another vests authority to make apportionments in an executive officer or board. Arizona and Idaho follow the plan of increasing or decreasing representation in the lower house of their legislatures with the number of votes cast in each county at the last general election. In Arizona, each of the fourteen counties elects one representative for every 1,500[10] votes or major fraction thereof cast for governor at the last preceding general election, with the proviso that each county shall have at least one representative.[11] The number of senators for each county is fixed in the constitution. In Idaho, one representative is elected by each county, of which there are forty-four, for each 2,500 votes or fraction of 1,000 or more cast for

[8] People v. Rice, 31 N. E. 921 (1892). Reference to Table II shows the strength of this "compulsion" in throwing this decision out of line with judicial opinion in other cases.

[9] For a discussion of the leading cases, see P. S. Reinsch, *American Legislatures and Legislative Methods* (1907), 204-212.

[10] A proposed constitutional amendment to allow one representative for each 3,000 votes or major fraction thereof was defeated at the polls in 1930.

[11] *Constitution of Arizona*, Art. IV, pt. 2, sec. 1.

governor at the last general election.[12] Each county, however, has only one senator. These plans have the theoretical advantage of stimulating participation in voting, but do not appear to be practicable except in those states having only a few counties and a relatively sparse population.

A more widely used plan vests authority to make apportionments in an executive officer or board. One of the oldest schemes of this nature is in effect in Ohio, where the governor, auditor, and secretary of state, after each decennial census, determine the number of senators and representatives to be elected by each county or district for each of the succeeding five biennial sessions. Very precise rules are laid down in the constitution to govern them in the performance of this task, and because of the resulting limitations there is discrimination against the more populous counties.[13] Nevertheless, apportionments are made regularly each decennium, and the greater discriminations existing in some states where this function has not been performed by the legislature for many years have been avoided.

The Missouri constitution contains a provision empowering the governor, secretary of state, and attorney-general to divide the state into senatorial districts, "as nearly equal in population as may be," in case the general assembly fails or refuses to do so at the session held following the census.[14] Recent experience with this arrangement has not been especially happy. In 1912, the governor refused to proclaim an apportionment concurred in by the secretary of state and the attorney-general, and the state supreme court declared that even if this formality had been met, the apportionment would have been void because of the inequalities in population of the districts.[15] In 1921, it was held that the initiative and referendum amendment, adopted in 1908, which in formal terms vested legislative power in the legislature, had nullified the constitutional provision giving the legislative power of making apportionments to the governor and his associates.[16]

In Maryland, it is the duty of the governor to arrange representation in the house of delegates after each federal census by assigning a num-

[12] *Constitution of Idaho*, Art. III; *Compiled Statutes*, 1919, p. 37.

[13] See F. R. Aumann, "'Rotten Borough' Representation in Ohio," 20 *National Municipal Review*, 82-86 (1931).

[14] Art. IV, sec. 7.

[15] State *ex rel.* Barrett v. Hitchcock, 146 S. W. 40 (1912).

[16] State *ex rel.* Lashly v. Becker, 235 S. W. 1017 (1921). Doubt has been expressed as to whether this decision would be followed in the future, in view of the fact that the court divided on a strictly partisan basis in reaching its four-to-three division, and the further fact that in previous decisions the continued validity of the apportionment clauses had not been questioned despite the adoption of the initiative and referendum amendment. L. M. Short, "Congressional Redistricting in Missouri," in this REVIEW, Aug., 1931.

ber of delegates to each county in accordance with rules laid down in the constitution.[17] An initiated constitutional amendment accepted by the voters of California in 1926 established a reapportionment commission with authority to district the state for both houses of the legislature in case this duty is not performed by the legislature itself. The amendment carried the important limitation that no county may have more than one senator.[18] The proposed Illinois constitution of 1922 provided a like procedure for making apportionments.[19] A plan recently proposed by a committee of the Wayne county, Michigan, board of supervisors would vest this authority in the secretary of state.

Several states, including Arizona, Indiana, Massachusetts, Michigan, Missouri, and New York, at one time or another have empowered the county board of supervisors, or a similar local authority, to divide a county into legislative districts for at least one house of the legislature after an assignment of a number of representatives has been made.

An interesting scheme to stimulate legislative activity in apportionment was adopted in Florida by constitutional amendment in 1924, but its efficacy remains to be tested. In case the legislature fails to apportion the representation at the session specified by the constitution, it is made the duty of the governor, within thirty days of the adjournment of such session, to call the legislature together in extraordinary session to consider the question of reapportionment; "and such extraordinary session of the legislature is . . . mandatorily required to reapportion the representation as required by this amendment before its adjournment, and such extra session so called for reapportionment shall not be limited to expire at the end of twenty days or at all, until reapportionment is effected, and shall consider no business other than such reapportionment."[20]

It appears from the foregoing that the chief defect in the existing mechanism for apportionment consists in the impossibility of compelling action by the apportioning authority in case of disinclination to perform the duty voluntarily. Experience with non-legislative apportioning agencies offers one way out of the difficulty.

In states without dominating metropolitan areas, authority might be vested in an executive officer or officers to district the state for both houses of the legislature on the basis of population, qualified voters, or whatever is deemed appropriate. The personnel and method of selection of the agency would necessarily vary from state to state, but it seems desirable that it should not consist of officials anxious to secure favors from the legislature, since bargaining would inevitably set in. Such an

[17] Art. III, sec. 5.
[18] *Statutes of California*, 1927, p. lxxxv.
[19] Proposed Constitution of Illinois, 1922, Sec. 24.
[20] Art. VII, sec. 3.

agency would be capable of as ingenious gerrymandering as any legislative committee if safeguards were not provided.

A more important consideration is that the apportioning authority should be amenable to mandamus by specific constitutional provision, which has not been true in the instances mentioned above. The decisions thus far would seem to indicate that without such precaution mandamus would not lie, because of the legislative nature of the function performed,[21] and that there would be no more positive remedy than there now is against the legislature. The Missouri supreme court stated in 1912 that the governor, secretary of state, and attorney-general, in so far as apportioning the state into senatorial districts was concerned, "were a miniature legislature, and consequently . . . could no more be compelled by mandamus to redistrict the state than the legislature proper could be."[22] The importance of this principle has been recognized in the plan for apportionment proposed by the committee of the Wayne county board of supervisors.

Provisions should be made allowing immediate reconsideration by the apportioning agency in case its action is invalidated. This should serve the function of making the task of reviewing apportionments much less unpalatable to the courts, enabling them to nullify unfair apportionments with the knowledge that their action would not result in an indefinite reversion to an earlier and more inequitable distribution of seats. Freed from this responsibility, there is a possibility that the courts would evolve a more definite set of standards for testing the validity of apportionments.

Such an apportioning agency would operate subject to the same rules as now guide the legislature in performing this function, i.e., equality of districts in population, contiguity of territory, etc. In some states, it would perhaps be possible to frame rules of a more precise character. The rule of equality could, for example, be phrased to permit a specified deviation of ten or fifteen per cent from the representative quota. In this connection, the rules followed in some states in which the function

[21] The apportioning agency should not include the governor or other officials not amenable to mandamus because of their position.

[22] State *ex rel.* Barrett v. Hitchcock, 146 S. W. 40 (1912). In Commissioners v. Jewett, 110 N. E. 553 (1915), the supreme court of Indiana held in a suit for injunction to restrain the county board from dividing the county into legislative districts that the exercise of such legislative power "is deemed as free from judicial control as though it were attempted by the legislature itself." Mandamus issued against local apportionment commissioners in Massachusetts in Attorney-General v. Suffolk County Apportionment Commissioners, 113 N. E. 581 (1916), but it appears that this remedy was specifically provided by law in this instance. However, mandamus was granted in New York against the local supervisors commanding them to divide the county into assembly districts. Baird v. Supervisors of the County of Kings, 33 N. E. 827 (1893).

of apportionment is vested in non-legislative agencies would be worthy of study.[23]

In states dominated by one or two metropolitan centers, the problem is a far different one. The rural sections of such states would be no happier with a legislature dominated in both houses by urban elements than the metropolitan areas now are under legislatures in which rural representatives predominate. There are several alternative solutions. The establishment of city states or of a high degree of home rule is suggested by some; by others, representation in proportion to population in both houses.

A third possible solution seems most feasible for immediate adoption in view of the fact that legislatures controlled by non-metropolitan representatives have to be reckoned with in the settlement. This is the plan recently adopted in California and proposed in Michigan involving representation in one house according to population and in the other according to acreage. Connected with this would be a non-legislative agency to apportion seats in the lower house according to population. In California, a commission consisting of certain executive and administrative officers has been empowered to do this in case the legislature fails to act. It also apportions for the senate, with the limitation that no county may be assigned more than one senator. In Michigan, it has been proposed that representation in the lower house be apportioned according to population after each census by the secretary of state, who would be subject to mandamus to carry out the duty. A permanent set of senatorial districts would be created.[24]

The vesting of the power to apportion in a non-legislative agency is, of course, open to various objections. The party controlling the apportioning authority would perhaps not lay out the districts so as to give the opposition any fair recognition. The same may be said of the legislature itself. Due to the fact that the apportioning agency could not be forced by mandamus to apportion in any particular fashion,the effectiveness of judicial control could be broken down by repeatedly drawing districts only slightly less offensive than an invalidated action in obedience to mandamus. In the normal course of things, however, it is believed that such an arrangement would operate to prevent marked discriminations in representation against a particular section of a state.

If skepticism exists as to the wisdom of introducing positive judicial

[23] It would be impossible to substitute rule for discretion as completely as has been done in the act providing for apportionment of the membership of the national House of Representatives among the states.

[24] See *The Michigan Plan*, Report of a Survey by Special Committee of Wayne County Board of Supervisors (Detroit, 1931). This report contains, in addition to the recommendations of the committee with reference to Michigan, the constitutional provisions of all of the states relating to the subject of legislative structure and apportionment.

control into what is essentially a political problem, there remains the possibility of employing the initiative for reapportionment. By using the initiative, the voters of Washington were able to adopt, in 1930, a statute reapportioning both houses of the legislature for the first time since 1901.[25] This measure remedied a situation in which great inequalities in representation prevailed. A Seattle district with 166,000 population had the same number of representatives as two counties, Wahkiakum and Skamania, with only 6,000 population between them. Efforts to block the use of the initiative failed, when the supreme court of the state held that the initiative was an appropriate means of attaining this objective.[26] The use of the initiative to set up a commission for apportionment in California has already been mentioned.[27]

Any one of these arrangements would appear to have some merit in solving problems in the procedure of apportionment. The almost insurmountable primary difficulty is that of persuading the groups now controlling the state legislatures to grant immediate relief from existing inequalities, and, further, that of simultaneously providing means of preventing the recurrence of such conditions in the future.

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Governors' Messages and the Legislative Product in 1932. During the year 1932, up to August 20, regular annual legislative sessions had been held in Massachusetts, New York, New Jersey, Rhode Island, and South Carolina; regular biennial sessions in Virginia, Mississippi, Kentucky, and Louisiana; and special sessions in Pennsylvania, West Virginia, Illinois, Arkansas, Maine, Ohio, Indiana, and Michigan. The present note is an attempt to summarize the recommendations made to these sessions (and to the regular session in Georgia in 1931) by the governors, and to indicate the legislative product which resulted from these proposals.[1]

The principal problems dealt with in the sessions, both regular and special, were unemployment relief, budget balancing, tax relief, reduction of salaries of public officials, ratification of the "lame duck" amendment, the passage of laws to facilitate borrowing from funds appropriated by

[25] See *Sess. Laws*, 1931, c. 2; Pierce's *Code*, Arts. 3558, 3566 (1929); Fred W. Hastings, "Voters Initiate Reapportionment," *State Government*, February, 1931, p. 7.

[26] State *ex rel.* Miller v. Hinkle, 286 Pacific 839 (1930).

[27] The use of the initiative to place a senatorial reapportionment in the constitution was blocked in Missouri, principally on the ground that such a matter was a "mere legislative act" and had no place in the "organic and permanent law of the state." State *ex rel.* Halliburton v. Roach, 130 S. W. 689 (1910).

[1] No information could be secured concerning the session in Louisiana.

Congress, revision of banking laws, and similar subjects. It will be noted that emphasis was laid principally upon economic matters. Under the stress of present-day conditions, some legislative bodies seem willing to follow executive leadership to a greater extent than in better times. The success of the comprehensive economic program of Governor Brucker of Michigan is a case in point. On the other hand, reduction of public salaries is having "hard sledding" in some states, as witness the defeat of all proposed legislation on this subject by the special session of the Illinois legislature and the regular session of the Massachusetts general court and the Georgia legislature.

High points include the enactment of a prohibition enforcement act by Rhode Island, the consolidation of all of the state's institutions of higher education in Georgia and in Mississippi under a single board of trustees, statutory tax limitation acts in West Virginia and Indiana, and a two per cent sales tax in Mississippi.

Arkansas.[2] On March 13, 1932, Governor Harvey Parnell issued a call for the legislature to meet on March 15 in a second special session. Seven items were named in the call, but the main object was to refund certain bonds and save the credit of the state. After four weeks of wrangling, the bond bill was passed. The senate then, on April 12, adopted a resolution to adjourn at 5 p.m. and sent it to the house about 4 p.m. The house sent a resolution to the senate to extend the session fifteen days for the purpose of retrenchment through reducing the salaries of state employees. That night, about 9 p.m., the lieutenant-governor and the speaker certified to the governor that the two houses had disagreed on the time for adjournment, and he at once issued a proclamation declaring the session at an end.

Next day, 68 out of 100 members of the house assembled, declared the office of speaker vacant, elected a new speaker, and proceeded to business. One old bill was considered and several new ones were introduced, but most of the time was taken up in denouncing the governor. The senate did not meet. On the second day, 60 answered the roll call. A committee was sent to the supreme court to see if the proceedings were legal. This committee stated that 87 members of the house and 12 members of the senate, 4 more than a majority (really 9 more than two-thirds), of both houses, had voted to extend the session; also that the house had never received any official notice of the senate's refusal to agree.

Six out of seven members of the supreme court, in an unofficial opinion, held that "both" had already been construed to mean "each" and that a two-thirds majority of each house was necessary to extend the session; that the session ended automatically on April 12, when the house and

[2] Note prepared by Professor D. Y. Thomas, of the University of Arkansas.

senate failed to agree on a resolution for extension, and that the governor's proclamation did not end the session, but only notified the public that the legislature was no longer in session. Two hours were then spent in trying to get possession of the refunding bill and in denouncing the governor. Failing in the former and succeeding in the latter, the members dispersed in anger. The Roland handed them by the governor was to call them "the rabid group of braying wild jackasses," without any apologies to Senator Moses.

Georgia.[3] Of 29 recommendations made by Governor R. B. Russell, Jr., to the regular session of the Georgia legislature in June, 1931, 13 became law. These included: (1) a balanced budget; (2) provision of necessary revenues to meet the budget; (3) discount of rentals of the W. & A. Railroad; (4) reorganization of state government; (5) provision for collection of all taxes through one office; (6) proposal of a constitutional amendment to permit the classification of property for tax purposes; (7) combination and coördination of the units of the state university; (8) a uniform textbook law; (9) reduction of the cost of textbooks by having them printed by contract or purchased from the publisher in quantity and distributed at actual cost; (10) proposal of a constitutional amendment to enable the state to reimburse counties for expenditures on state roads; (11) proposal of a constitutional amendment to change the date of taking office of a governor from June to January; (12) congressional redistricting; and (13) preparation of a new school code.

Other proposals on which legislation was introduced, but failed of passage, included: (1) reduction of salaries of state employees 5 or 10 per cent in 1932 and 1933; (2) stopping of further diversion of road funds; and (3) revision of the statutes. The governor's recommendation of a reduction of salaries for statutory offices in local government was not carried out by the passage of a legislative act, but voluntary adjustments are being made in the counties in some cases. His recommendation of a survey of the system of higher education did not require passage of a statute, and is being followed up under the authority of the board of regents of the institutions of higher education.

Other matters upon which recommendations were made, but upon which no action was taken, include: (1) abandonment of the general property tax for state purposes; (2) limitation of the permissible tax rate of counties and cities; (3) statutory provision that any new taxes must displace the tax on real estate; (4) closer supervision of the expenditure of state school funds; (5) greater emphasis on vocational training in public and high schools; (6) no decrease in educational equalization fund;

[3] Information furnished by Miss Ella May Thornton, state librarian.

(7) prohibition of further contributions by counties to the building of state roads; (8) proposal of a constitutional amendment to require the prorating of receipts in case of over-appropriations; (9) requirement that patients bear the cost of care in state hospitals and eleemosynary institutions; (10) increase in the maximum hospital benefit under the workman's compensation act to $500; and (11) authorization of lump sum payments in case of total and permanent disability.

Illinois. Up to August 20, Governor Louis L. Emmerson called three special sessions of the Illinois legislature since the regular session in 1931. The first convened on November 5, 1931; the second on January 19, 1932; and the third on February 1, 1932. These three sessions ran concurrently, adjourning *sine die* on May 5. The governor's proclamations calling these special sessions named a great many subjects for the consideration of the assembly. The first session was called to deal with 32 different subjects, the second to deal with 11 additional subjects, and the third to deal principally with the reduction of salaries and economy in the public service.

Mr. DeWitt Billman, secretary of the Illinois Reference Bureau, writes: "I am afraid that any attempt to pick out bills embodying the governor's recommendations on all subjects included would not be possible. For one reason, he included in these calls a number of subjects which were not administration subjects or sponsored by the governor, but included by request of persons who insisted that the matter was of such a pressing nature as to warrant consideration at a special session. The subject of taxation in its broadest sense was specified for the attention of the legislature. A number of bills on this subject were prepared, including an income tax, but hundreds of others on the same subject of taxation failed of enactment. There was no program of administration bills, and the calls for the most part specified subjects for legislative consideration rather than definite recommendations as to particular proposals."[4]

The first session enacted 68 bills, the second session only three bills, and the third session 16 bills. Among other matters, the first special session ratified the "lame duck" amendment to the federal Constitution. Most of the economy legislation of the third session was defeated, while the unemployment relief program was approved.

Indiana.[5] Governor Harry G. Leslie called a special session of the Indiana general assembly to meet on July 7. The purpose was to pass tax limitation legislation and to effect any possible economies in state and local expenditure for tax relief purposes. Recalling somewhat the extraordinary procedure followed by Governor Bilbo in Mississippi in exacting signed

[4] Letter of July 12, 1932.

[5] Information furnished by the Indiana Legislative Bureau.

pledges from the members of the legislature before calling them into session, the speaker of the house and the lieutenant-governor of the state circulated a letter to the membership of the assembly stating that "as a condition to calling a special session of the legislature, Governor Leslie requires, first, that such session be limited to subjects of tax relief only, and second, that a tax program be agreed upon in advance." The letter then proceeded to ask: "For the governor's information, will you indicate (1) whether you are willing to agree to a special session of the legislature for tax relief only, (2) will you further indicate your views as to the 17 propositions of principle contained in the report of the Citizens' Tax Committee, mailed you a few days ago, as they appear on pages 4-7 of such report, stating your approval or disapproval of each proposition?" The letter went on to point out that "the Citizens' Tax Committee wisely refrains from trying to make 'rubber stamps' of the membership, and therefore sets forth propositions of principle which the legislature is now asked to formulate into law in its own way. We are hoping that Governor Leslie will take the same attitude if a majority of the membership of both houses substantially approves the propositions of principle contained in the report."

The Citizens' Tax Committee referred to in the letter was a small body of private citizens who had been appointed by the governor to attempt to find a solution for the state's economic problems. The principal features of the recommendations were tax limitation and salary reduction. Drastic reductions were made in authorized budget totals for municipal subdivisions of the state for the current year.

Kentucky.[6] Governor Ruby Laffoon was unusually successful in securing the enactment of his legislative proposals. All of his five major recommendations were passed by the legislature. These included: (1) the making of an audit of the state ($150,000 was appropriated for the purpose); (2) reducing the size of the board of managers of penal and charitable institutions from 12 to 5, and changing it from a voluntary to a paid board; (3) a tax levy upon buses and trucks, sufficient to cause them to give the railroads a chance for competition; (4) extending the time for payment of delinquent taxes from January 1 to March 1; and (5) authorizing banks to offer state warrants as security against state deposits in lieu of bonds.

The governor's proposal for a tax to balance the budget was the only unsuccessful part of his program. This was transmitted to the legislature with an explanatory message in which he asked that a general sales tax of two per cent be imposed. A bill for this purpose was passed by the house, but died in the senate.

[6] Information furnished by Professor J. Catron Jones, of the University of Kentucky.

Maine.[7] A brief special session of the Maine legislature, called by Governor Gardiner for the purpose of amending the tax laws so as to avoid a prospective loss of revenue for highway purposes, was held on April 1. Two bills were enacted—one dealing with the gasoline tax, which was the one for which the session was called, and another to amend the law governing primary elections. The legislature was in session only one day.

Massachusetts.[8] Governor J. B. Ely made 14 recommendations in his message to the regular session of the Massachusetts general court which convened on January 6. Of these, 3 were approved, one was approved in part, one was rejected by vote, and 9 were rejected through the committees.

The projects approved were as follows: (1) extension of the law for payment of part of the gasoline tax to cities for an additional period of three years, increasing the allocation by half a cent for unemployment relief projects; (2) authorization of the commissioner of banks to issue certificates secured by the assets of a bank being liquidated to enable the quick securing of cash by depositors; (3) the creation of central credit banks for the use of savings and coöperative banking enterprises, to make loans against mortgage security. The project approved in part was a recommendation for more frequent payment by the state to the cities of money for welfare projects. The general court provided a committee for an investigation of the necessity of legislation on this subject.

The proposal that was rejected was one for a cut of ten per cent in the salaries of state employees. When the original proposal for a reduction in salaries was defeated, a substitute proposal for a reduction in the salaries of the members of the general court for the present session was proposed. This project was no more favorably looked upon than the first. The Massachusetts general court has a custom of defeating obnoxious legislative proposals by having committees report that no legislation is necessary. This was the method of execution used upon eight of the recommendations of the governor. These recommendations were as follows: (1) creation of a division in the department of labor and industries for supervision of the public employment service, with authority to establish branch offices; (2) carrying out of the recommendations of the commission on stabilization of employment through the use of public works; (3) modification of the milk standardization law; (4) licensing of milk distributors and middlemen; (5) expansion of the police powers of the department of agriculture concerning milk; (6) changing the term of office of the chairman of the commission on administration and finance to correspond with the term of the governor; (7) abolition of the office of comptroller (one of the members of the commission on administration

[7] Information furnished by Governor William T. Gardiner.

[8] Information furnished by Edward H. Redstone, state librarian.

and finance) and return of these duties to the auditor of the commonwealth; and (8) regulation of holding companies. The final recommendation was for the creation of a corporation with an authorized capital of $20,000,000 to take over mortgages and other securities of banks in order to release funds to depositors. The committee which had this bill in charge reported that it should be referred to the next annual session. This is merely another way of killing a bill in a Massachusetts general court.

Michigan.[9] Governor Wilber M. Brucker submitted a comprehensive program to the special session of the legislature which convened on March 29. The success of this program was extraordinary. Of 22 recommendations made, 20 were enacted.

The items in the governor's program which were approved by the legislature were as follows: (1) that the scope of the statutes relative to the issuance of "calamity" bonds be broadened so that local subdivisions might legally issue such amounts as were needed for local direct relief; (2) that the period for redemption for property to be sold for 1929 taxes be extended from one year to two years, and the penalty substantially reduced; (3) that taxpayers whose property had been forfeited to the state for tax delinquencies for 1927 and 1928 be permitted to redeem the taxes for those years without being required to redeem subsequent delinquencies at the same time; (4) that taxpayers delinquent for the taxes of 1930 or 1931 be permitted to pay the same in installments of 25 per cent, and that the interest on such deferred payments be reduced from three fourths to one half of one per cent a month; (5) that the general tax law be amended to reduce the allowances for printing of tax sale notices in the counties where the number of descriptions to be advertised exceeded 15,000 per year; (6) that the depository law be amended to permit bonds issued by federal land banks and approved first mortgages on real estate to be pledged to secure deposits of public funds; (7) that the banking act be amended to make possible the reorganization of a bank when consented to in writing by depositors representing 85 per cent in amount of the deposits; (8) that municipalities and school districts be authorized to join in the necessary depository agreement for the reorganization of closed banks; (9) that the banking law be amended to permit the distribution of assets to depositors, with their consent, on an equitable basis without the necessity of reducing such assets to cash; (10) that the legislative bodies of municipal subdivisions be required to designate a depository, so that deposits could be secured by collateral furnished by the depository and the treasurer's surety bond could be released or reduced; (11) that the banking act be amended to permit

[9] Information furnished by Mr. D. B. Smith, executive secretary to the governor.

the state banking department to supervise state financial institutions under receivership, to require the filing of periodical reports by the receiver, and to restrict the salaries paid receivers to a uniform scale adopted by the state banking department; (12) that a law be enacted to authorize receivers of closed banks and trust companies to apply for loans from the Reconstruction Finance Corporation; (13) that a temporary commission be established, made up of three state officers named by the governor, to deal with distressed real estate bonds; (14) that the special session ratify the "lame duck" amendment to the federal Constitution; (15) that a law be provided for the refunding of bond and note obligations of political subdivisions in assessment districts, subject to the approval and supervision of the state administrative board, and to authorize extension of the time within which such obligations shall mature for a period of not longer than five years; (16) that the state soldiers' bonus bonds maturing in 1932 be refunded; (17) that all personal service expenditures of the state, and all supplies, material, and contractual services, be reduced by 15 per cent below the totals fixed in the appropriation act for the fiscal year beginning July 1, 1932; (18) that a personnel commission be created, consisting of three members of the senate finance committee, three members of the ways and means committee of the house, and three citizens to be selected by the governor, to inquire fully into the subject of state employment, and to make recommendations to be incorporated in the budget for the next biennium that will itemize, classify, and equalize the salaries of all employees of the state; (19) that an amount equal to the entire automobile weight tax be appropriated and returned to the counties of the state; (20) that no county be permitted to levy county road taxes upon real estate, except as an emergency measure adopted by a two-thirds vote of the board of supervisors. Other amendments to the highway laws, making numerous minor changes, were also approved.

Only two of Governor Brucker's recommendations failed of adoption: (1) that school districts desiring to make expenditures during the next three years beyond a figure 15 per cent below the budgets of 1930 be required to obtain approval from the state administrative board or suffer suspension of state aid, and (2) that an amendment to the state constitution be submitted to the people to enable them to register their opinion as to the desirability of authorizing the legislature to abolish some part of the general tax levy for the payment of operating expenses of local schools and to replace these from the proceeds of a graduated state income tax.

Mississippi.[10] Governor Theodore G. Bilbo, who retired from the gov-

[10] Information furnished by Miss Mamie Owen, assistant state librarian.

ernorship of Mississippi in January, delivered a "retiring address" to the legislature on January 6. In this, he made 16 recommendations for legislative action. Only one of these became law. This was the repeal of the absentee voters law. Bills were introduced, however, on 9 other topics mentioned by him in the address. The subjects dealt with were: (1) the creation of a state central purchasing agency; (2) inspection of hospitals by the state board of charities; (3) purchase of cut-over land for the utilization of prison labor in agriculture; (4) restitution of the salary of the prison superintendent to a figure from which it had been reduced by the previous legislature; (5) placing control of the banking department in the hands of laymen; (6) better regulation of public utilities; (7) creation of a state printing plant; (8) adoption of the Missouri system of handling tax sales; and (9) adoption of a county unit for schools and roads.

Other recommendations made in the message upon which no bills were introduced were: (1) abolition of local boards of all state-owned hospitals and the placing of these institutions under the state board of charities; (2) a requirement that members of the legislature make public their connections with public utilities; (3) creation of a board of pardons; (4) establishment of a penalty for the offer or acceptance of money for securing a pardon, except by attorneys; (5) amending the state suffrage law to permit persons to qualify as voters upon the basis of a poll tax alone, eliminating the requirement of a property tax as well; and (6) creation of the office of state director of employment.

In his inaugural address, Governor Martin S. Conner, who assumed office on January 19, made 25 suggestions requiring legislative action. Of these, 11 were acted upon favorably, 1 was approved in part, and 13 failed.

The successful items in the governor's program were of vital importance to the state: (1) adoption of a two per cent sales tax for the purpose of balancing the state budget; (2) appointment of a legislative committee to report to the next session on the administrative reorganization of the state government; (3) creation of a single board of trustees for all state owned and operated universities and colleges; (4) promotion of conservation of natural resources by the creation of a state game and fish commission, and by the enactment of a system of petroleum laws; (5) creation of a legislative committee to study the problem of making road and school districts coëxtensive with county boundaries, and placing them under unified management; (6) proposal of a constitutional amendment to increase the minimum free school age from five to six; (7) reduction of the number of high schools in the state by consolidation of districts; (8) adoption of a highway program financed from current receipts and

short term notes; (9) levy of increased taxes upon motor vehicles of common carriers of passengers or freight; (10) centralization of all state agricultural work, which will be considered by the committee studying the problem of reorganization; and (11) making an appropriation for additional clerical assistance in the office of the service commission.

The governor's recommendation for the taking of steps to insure the collection of the cost of care in welfare institutions from persons who are able to pay was followed out in part by providing for the collection of such support charges from the parents, relatives, and estates of those confined in hospitals for the insane. No action was taken by the legislature on the following recommendations: (1) that special funds be made subject to executive control for emergency purposes; (2) that the legislative session be recessed while the reorganization committee made its study, so that action upon reorganization would not have to wait until the next regular session; (3) that the legislature create a state sinking fund commissioned with supervisory control over the issuance and sale of bonds of the state and political subdivisions, and with the management of the sinking funds of all units and the marketing of bonds; (4) that the legislature authorize the refunding of county and district obligations into consolidated county bond issues; (5) that steps be taken by the state toward a progressive assumption of the cost of elementary education; (6) that the boundaries of school districts be made coëxtensive with county lines and a county system of control provided; (7) that more rigid control be established over the adoption and distribution of school books; (8) that all public welfare boards be consolidated; (9) that authorization of a $5,000,000 highway bond issue be repealed; (10) that the state establish more rigid regulation and supervision of the expenditure of funds received by counties from motor vehicles and gasoline taxes; (11) that laws be passed for the regulation of public utilities, particularly power and gas distributors; (12) that adequate appropriations be made to permit the state tax commission to secure experts to aid in the assessment of the property of public service corporations; and (13) that appropriations be made for official publicity concerning the state.

New Jersey.[11] Of the 22 recommendations made by Governor Harry A. Moore to the New Jersey state legislature at its regular session in 1932, only five were approved in substantially the form recommended by the governor, three others were enacted in part, and the remaining 14 failed of enactment.

The successful proposals were: (1) to vest power in the chief justice of the supreme court to assign common pleas judges to conduct circuit

[11] Information furnished by Mr. Wylie Kilpatrick, assistant secretary, New Jersey State League of Municipalities.

courts in counties other than those in which they were appointed; (2) to revise the milk and dairy code; (3) to provide for study of South Jersey rapid transit; (4) no increases in taxation whatsoever; and (5) economy in all appropriations. In addition to the passage of appropriation bills which total less in amount than for the preceding year, the legislature vested in the governor the power of suspending or reducing any appropriation during the course of the year, and of reducing state personnel or adopting a stagger system of employment, wherever this should appear desirable. New taxes were avoided by utilizing unencumbered surpluses and bond monies for unemployment relief.

In three cases, the legislature approved in part the recommendations of the governor. One of these related to the abolition of various enumerated commissions and boards. A number of survey commissions were permitted to lapse, but not all of the boards whose termination was recommended were abolished. In the second place, the governor proposed a quarterly installment method of paying taxes in the place of semi-annual payment. One purpose of this recommendation was to obviate the necessity for temporary loans in anticipation of the receipt of taxes. Such a measure was passed in the assembly, but lost in the senate. Nevertheless another measure was enacted permitting the prepayment of taxes in advance of the due dates, a device which has been put into practice in a number of municipalities in order to approximate the installment method. In the third place, the governor recommended repeal of the state prohibition enforcement act; and the legislature provided for a referendum on the subject at the November election.

The proposals of the governor which failed of adoption were: (1) remission of $13,500,000 of state funds (gasoline taxes and highway funds) to local subdivisions for the purpose of reducing local property taxes; (2) reorganization of the administrative branches of the state government in accordance with a plan prepared by the National Institute of Public Administration; (3) transference of the duties of the state water commission to the department of conservation and development; (4) a short legislative session (the session was as long as usual, if not longer); (5) an election registration law to be applied uniformly to all municipalities; (6) personal registration in every election; (7) a fall primary instead of a spring primary; (8) election of assemblymen by districts instead of by counties; (9) transfer of the appointment of various judicial commissioners from the governor to the justices of the supreme court; (10) a constitutional amendment relieving the court of errors and appeals from the duties of a supreme court; (11) relief of the supreme court of some of its duties; (12) repeal of the law which prevents appeals from common pleas courts in workmen's compensation cases; (13) extension of the

jurisdiction of district courts to all cases of less than $1,000 in amount; and (14) a survey of local rural roads with a view to transferring township roads to counties.

New York. Governor Franklin D. Roosevelt recommended 32 subjects to the legislature for consideration during the regular session in 1932. Of these, 11 were enacted into law in accordance with the governor's recommendations. Four were partially approved, 15 were rejected by the legislature, and no legislation was introduced upon the other two subjects.

The subjects upon which the governor was successful were: (1) passage of legislation for unemployment relief; (2) issuance of state bonds for temporary relief of unemployment; (3) creation of an advisory council to the superintendent of banks; (4) revision of the laws relating to the sale of securities to the public; (5) levying of taxes upon heavy motor vehicles; (6) an increase in the income tax; (7) an increase in the gasoline tax; (8) the levying of an emergency stock transfer tax; (9) enactment of legislation to prevent borrowing by municipalities beyond a reasonable limit; (10) the inauguration of a reforestation program in conformity with a recent constitutional amendment; and (11) amendment of laws relating to state public works contracts to assure the payment of wages earned on such contracts as may be defaulted.

Legislative projects which were carried out in a form partially satisfactory to the governor related to: (1) the making of appropriations for park and parkway developments; (2) the reform of township government; (3) appropriation for two new penal institutions (appropriation was made for one for juvenile delinquents), and (4) reform of election procedure. In the last instance, a commission was appointed to study the election laws, consisting of three senators and four assemblymen, who are to report to the next session of the legislature.

The proposals of the governor which failed of adoption included: (1) unemployment insurance; (2) creation of a commission to study the organization of local government; (3) elimination of unsound banking practices by separating savings from commercial deposits; (4) reform of the old age pension law to provide for a contributory system; (5) congressional redistricting; (6) greater authority to municipalities to form utility districts for generating, distributing, and selling electricity; (7) extension of the workman's compensation law to cover all occupational diseases; (8) state regulation of fee-charging employment agencies; (9) declaration by law that the labor of human beings is not a commodity; (10) establishment of an advisory minimum fair wage board for women and children; (11) the granting of jury trial to persons accused of violating injunctions in labor disputes; (12) referendum on amendments to the federal Constitution; (13) legislative redistricting; (14) proposal of a

constitutional amendment to permit the use of the initiative in proposing constitutional amendments; and (15) election of the governor for a four-year term in non-presidential years.

No bills were introduced to carry out the governor's recommendations for the prohibition of chain banking and for a state land survey.

Ohio. Up to August, Governor George White called two special sessions of the Ohio general assembly. The first one convened on March 29. The governor's call specified five subjects for consideration: (1) authorizing counties to issue bonds for relief purposes; (2) increasing excise taxes on public utilities and providing that the funds raised from this source should be applied to the retirement of county relief bonds; (3) amending the code to provide that boards of education may supply clothing, medical attention, and other necessities to school children; (4) providing that a portion of the revenues from gasoline taxes and motor vehicle licenses already allocated to counties, municipalities, and townships may be used for relief purposes for a limited period; and (5) creating a temporary state relief commission with power to administer the relief laws. All of these recommendations were approved promptly, and the session closed on March 31.

The governor's call for the second special session, convened on May 16, restricted it to the amendment of the banking laws so as to give power to the superintendent of banks to borrow money (from the Reconstruction Finance Corporation or other sources) and pledge the assets of closed banks for the purpose of facilitating liquidation or aiding in the reopening and reorganization of such closed banks or their merger or consolidation with other banks. The assembly passed the act which had been prepared for this purpose and adjourned on the same day.

Pennsylvania.[12] Governor Gifford Pinchot called a special session, meeting on June 27, to consider 14 specified subjects. On August 18, the day before adjournment, the response to the governor's proposal stood as follows: six had been approved, three had been approved in part, and five had failed. The items approved were: (1) making appropriations for unemployment relief, which was done to the extent of $12,000,000; (2) granting of authorization to political subdivisions to negotiate temporary emergency loans up to the amount of delinquent taxes (the legislature also initiated a constitutional amendment to borrow $25,000,000 to refund these municipal loans where the money was expended for unemployment relief); (3) providing state revenue for unemployment relief, which was done by imposing a one per cent tax upon the gross receipts from the sale of tangible personal property for the period from September 1, 1932, to

[12] Information furnished by Mr. J. H. Fertig, director of the Legislative Reference Bureau.

February 28, 1933 (a return of about $15,000,000 was expected, which was more than the total appropriations of the special session); (4) granting power to the secretary of banking to sell, pledge, and lease real and personal property of closed banks and extend the due date of mortgages held by closed banks; (5) authorizing building and loan associations to borrow from the Reconstruction Finance Corporation; (6) authorizing political subdivisions of the state to collect their taxes under an installment system, each subdivision to fix the number of installments and the dates when the taxes become due and delinquent.

The three items approved in part were: (1) balancing of the state budget, which required revenues or savings of approximately $14,700,000 (the legislature passed bills reducing appropriations for the biennium to the extent of $13,700,000, the $1,000,000 difference to be taken care of by transfers from special funds and by the sales tax); (2) an increase in the taxing power of cities of the first and second classes, i.e., Philadelphia and Pittsburgh (but not applying to all political divisions of the state, as the governor recommended); (3) the initiation of constitutional amendments (a) to take advantage of any federal legislation authorizing loans to states, (b) for the repairing and construction of highways, and (c) to meet, if necessary, the expenses of state government during the next biennium (of these proposals, the first two failed, but an amendment to borrow $25,000,000 for general state expenses was proposed by the legislature).

Administration bills on the following subjects failed of passage: (1) amending the laws relating to the collection and enforcement of delinquent taxes in political subdivisions; (2) authorizing the councils of cities of the first class to fix the number and compensation of county employees whose compensation is paid out of the city treasury; (3) authorizing the creation and regulation of limited dividend housing companies; (4) proposing a constitutional amendment permitting the state to distribute among its political subdivisions the whole or a part of any tax collected by the state; and (5) proposing a constitutional amendment authorizing a state income tax exclusively for educational purposes, of which a part was to be returned to the school districts of the state.

Rhode Island.[13] In his message to the regular session of the Rhode Island legislature which opened in January, Governor Case made 17 recommendations. Of these, 10 were followed out by the legislature, and measures were enacted which were satisfactory to the governor. One other was followed in part. In two other cases, bills were introduced but died in committee; and in the remaining four instances no bills were introduced at all.

[13] Information furnished by Governor Norman S. Case.

The successful proposals were: (1) more effective state supervision of local borrowing; (2) provision for the operation of the state airport; (3) suspension of payment of costs of prisoners committed to jail; (4) abolition of minimum sentences for vagrancy and drunkenness; (5) enactment of an area testing law to enable the eradication of bovine tuberculosis; (6) continued appropriations in support of pest control activities; (7) more rigorous control over the dispensing of narcotics; (8) enactment of state laws for coöperation with the federal government in the enforcement of the Eighteenth Amendment; (9) congressional redistricting; and (10) enactment of a law to carry out a constitutional provision for absentee voting.

The governor's request that no additional taxes be levied was followed only in part, as it was found necessary to lay certain emergency taxes for relief purposes. Bills to provide for a state school for police recruits and for an annual compulsory inspection of motor vehicles died in committee.

No bills were introduced to carry out the governor's recommendations (1) that sidewalks be built along state highways; (2) that saw-mill operators be registered and licensed; (3) that full-time health departments be provided in rural areas; and (4) that the governor be authorized to appoint the adjutant-general.

South Carolina.[14] Only two of the 15 recommendations made by Governor Ibra C. Blackwood to the regular session of the South Carolina legislature in January were adopted. One was the amendment of the state fund deposit law to permit acceptance by the state treasurer of any note or other obligation secured by receipts for cotton stored in a bonded warehouse as security for public funds. In addition, the legislature passed a cotton crop reduction bill in substantial conformity with the plan adopted by Texas, Mississippi, and Arkansas; but this bill has had no effect as yet, and there seems to be little chance of its being made effective in the near future.

The governor recommended the issuance of bonds to take care of a $5,000,000 state deficit, such bonds to have maturities beginning not later than five years from 1932 and extending over a period of ten years. Instead of following this plan, the legislature laid a continuing tax levy of 2.5 mills annually on the property of the state for the purpose of retiring this deficit. The governor also recommended the enactment of any legislation that would effect economy in the school system without materially injuring or destroying that system. The legislature complied with this rather indefinite recommendation by reducing teachers' salaries throughout the state by 15 per cent for the 1932-3 session.

[14] Information furnished by Mr. Charles H. Gerald, secretary to the governor.

Other suggestions by the governor which were partially met by the legislative body, in most cases by providing what was recommended for only certain counties, and not for others, included: (1) allowance of a liberal premium or discount to taxpayers who make advance payments; (2) extension of permission to taxpayers to pay their taxes in four installments; (3) enactment of strict legislation to prevent a state deficit; and (4) allowance of tax exemption for new developments of an industrial character. Although the governor asked that no legislation be enacted to limit the number of bonds for highway purposes, thereby restricting the highway program, a law was passed limiting the amount that might be issued to a total of $45,000,000.

Bills were introduced, but not adopted, on the following subjects dealt with in the governor's message: (1) assumption of control by the state of the issuance and sale of bonds for subordinate units; (2) ratification of a constitutional amendment authorizing biennial sessions of the general assembly. No action was taken on recommendations of the governor (1) that the opening of the fiscal year be changed from January 1 to July 1; (2) that the time for the payment of taxes be extended without penalty; (3) that an engineering survey be made as a prerequisite to the adoption of a plan for placing county roads under the state highway department; and (4) that a workmen's compensation act be enacted.

Virginia.[15] Of 24 recommendations made by Governor J. G. Pollard to the regular session of the Virginia legislature in January, 17 were approved, one was approved in part, four were defeated, and on the remaining two no legislation was introduced. The recommendations approved were: (1) reduction in appropriations from the general fund for highway purposes; (2) reduction of 10 per cent in state salaries for one year; (3) increased appropriations for rural schools in the second year of the biennium; (4) reduction of appropriations to institutions of higher education; (5) revision of the laws to make it possible for county treasurers to secure surety bonds; (6) correction of the law to permit the suspension of defaulting local officers; (7) payment by the state of interest defaulted by counties, out of state money appropriated to the county; (8) enactment of a law to provide optional forms of county government; (9) establishment of road camps for prisoners; (10) amendment of the law to prevent county treasurers from using their offices to extend favors in tax collections; (11) revision of the law concerning shell fisheries; (12) congressional redistricting (only minor changes were made); (13) refunding of state bonds due on July 1, 1932, and establishing a sinking fund for their retirement; (14) refunding of $1,000,000 of highway cer-

[15] Information furnished by Mr. Morton L. Wallerstein, secretary of the League of Virginia Municipalities.

tificates; (15) recodification of the election law; (16) renewal of an appropriation for the purchase of land on Jamestown Island for a state park; and (17) no appropriation at present for a new liberal arts college for women.

A recommendation that the assessment on teachers for the teachers' retirement fund be doubled, and that the state appropriation for the overhead expenses of the organization be doubled, was approved in part, the latter half of the proposal being adopted.

The recommendations which were defeated were: (1) increased appropriations for state hospitals; (2) a constitutional amendment to leave special assessment policy to local subdivisions; (3) enactment of legis-

SUMMARY FOR NINE STATES

	Total proposals	*Adopted*	*Partly Adopted*	*Lost*	*Not introduced*
Russell of Georgia	29	13	2	3	11
Ely of Massachusetts	14	3	1	10	0
Pinchot of Pennsylvania	14	6	3	5	0
Brucker of Michigan	22	20	0	2	0
Conner of Mississippi	25	11	1	13	0
Moore of New Jersey	22	5	3	14	0
Roosevelt of New York	32	11	4	15	2
Case of Rhode Island	17	10	1	2	4
Pollard of Virginia	24	17	1	4	2

lation to place the duty of liquidating failed banks in the division of banking; and (4) revision of the teachers retirement act.

The two items upon which no legislation was introduced were: (1) increase in the force of bank examiners, to be financed by an increased assessment on the state banks; and (2) authorization of the governor to mobilize temporarily under a single control the police forces of cities, towns, and counties in strike areas for strike duty.

West Virginia.[16] Governor William G. Conley called a special session of the legislature to meet on July 12. This session was still in progress at the time of writing, but the governor reported that laws had been enacted on three of the 11 recommendations made in his call, as follows: (1) an enabling act to permit banking institutions to pledge their assets to secure deposits made by receivers of closed banks, and to secure deposits of public funds, and also to authorize the receivers of closed banks to negotiate loans from the Reconstruction Finance Corporation for distribution among the creditors and stockholders of the bank; (2) a statutory limitation of tax levies applying to the levies of 1932; and (3) proposal

[16] Letter of Governor William G. Conley, August 10, 1932.

of an amendment to the constitution to provide for constitutional tax limitation, to be voted upon at the election of 1932.

HARVEY WALKER.
Ohio State University.

State Legislation on Public Utilities in 1932. The year 1932 was an off-year in matters of state legislation, since regular legislative sessions were held in only nine states.[1] Public utilities legislation, however, was given considerable attention in at least seven of the nine regular sessions, and received more than passing notice in the special sessions of several states.[2]

General revision of utilities laws, or noteworthy extension of the power of regulation, was undertaken in only one state, i.e., South Carolina, which passed an act regulating electrical utilities in South Carolina.[3] The act serves as a code for the electrical division of the public utilities field. The law deserves special notice since it contains several of the more advanced provisions advocated by liberals as a means of attaining more effective regulation. For example, it empowers the commission to investigate fully *upon its own initiative*; gives the commission extensive powers over mergers, issuing of securities, payment of service charges, etc., by an operating company to a holding company; and provides that "every permit or franchise hereafter granted, either by the state or any municipality thereof, shall have the effect of an indeterminate permit which shall continue in effect until terminated as provided by this act. . . ."[4]

The laws passed by the several states relative to public utilities may conveniently be classified under three heads: (1) increased regulatory authority vested in the state commissions; (2) taxation; and (3) municipal ownership.

Increased Authority of State Commissions. In one or more instances, authority of the commission was extended to, or increased over, valuations, rates, security issues, holding companies, and motor transportation. The Indiana legislature, in special session, passed a bill instructing the public service commission to use as a valuation for rate-making purposes "the prima facie true cash value" of the property; which also shall be used as the basis for taxing purposes.[5]

[1] Regular sessions were held in Kentucky, Louisiana, Massachusetts, Mississippi, New Jersey, New York, Rhode Island, South Carolina, and Virginia.

[2] The following states considered public utilities legislation in special sessions: Indiana, Ohio, Pennsylvania, West Virginia.

[3] Published by the South Carolina Railroad Commission, Electric Utilities Division.

[4] South Carolina Railroad Commission, *An Act Regulating Persons, Corporations, and Municipalities Engaged in the Generation, Transmission, Delivery, or Furnishing of Electricity for Light, Heat, or Power*, Sec. 3, p. 12.

[5] Indiana Legislature, 1932, *House Bill No. 655.*

The Kentucky legislature considered a bill to create a public service commission of three members to regulate public utilities and take over the powers and duties of the department of motor transportation and a portion of those of the existing railroad commission. It was recommended by Governor Laffoon and passed the senate by a vote of 24 to 1, but was killed in the house.[6] Motor transportation was brought under state control by an act providing that no common carrier and no contract carrier "shall operate any motor vehicle for hire for the transportation of persons or property on any public highway in this state without having obtained a permit from the state highway commission."[7] Each carrier must pay a fee of $25 for each truck, and file a schedule of rates.

The Louisiana legislature authorized the public service commission "to inquire into agreements and contracts made by public utilities and subsidiaries to insure against unfair rate-making."[8]

The Massachusetts legislature supported the committee on power and light in rejecting at least six bills relating to the regulation of holding companies.[9] A bill providing that all taxicabs in the state be placed under the department of public utilities was referred by the legislature to the next annual session. The legislature, however, made it illegal for any gas or electric company to "loan its funds unless the loan is approved in writing by the [public utilities] department."[10]

Bills sponsored by Governor Roosevelt were introduced in the New York legislature authorizing the creation of municipal utility districts and entrusting to the public service commission the power to authorize such districts to acquire as a public necessity the property of public utility corporations in such districts. In a special message, the governor pointed out "the necessity of early adoption of legislation which will permit municipalities to buy cheap electrical power . . . developed from the St. Lawrence." The bills did not receive passage. A bill was passed, however, continuing for one year the legislative committee entrusted with the duty of making a survey of utility companies engaged in interstate transmission of power.[11]

The Pennsylvania senate, in special session, was urged by Governor Pinchot to make "a complete investigation of the relations existing during the last eight years between public utilities and the public service commission and each member thereof during that period."[12] The senate

[6] Kentucky Legislature, *Senate Bill 212*. Reported in *U. S. Daily*, March 5 and 20, 1932.

[7] Kentucky Legislature, *House Bill No. 79*, Art. II, Sec. 1; Art. III, Sec. 2.

[8] *Senate Bill No. 110*. Reported in *U. S. Daily*, July 9, 1932.

[9] *House Bills 986, 987, 988, 1081*, and *Senate Bills 199 and 200*.

[10] *Mass. Laws*, 1932, Chap. 132. [11] *New York Times*, April 7, 1932.

[12] Governor Pinchot's special message to the Senate, July 26, 1932.

committee which had started an investigation of charges brought by the governor against Chairman W. D. B. Ainey was discharged when Mr. Ainey resigned. In the face of a threat by the governor to reconvene the senate if it failed to act, the senate adopted a resolution for the proposed investigation, appointed a committee of seven to carry it out, and appropriated $100,000 for expenses involved.

Governor Pinchot has advocated to the public and to the legislature, without legislative approval to date, a legislative program containing the following essentials: (1) an amendment prohibiting schedules which increase rates to go into effect until after they have been approved by the public service commission; (2) an amendment permitting a municipality or any lawfully constituted district to condemn, purchase, and operate any public utility within the municipality or district; (3) an amendment requiring that in a rate case where a municipality is involved all expenses be paid for by the utility or any lawfully constituted district; (4) the appropriation thus saved to the state to be used in part for engineers to assist municipalities in valuations and rural developments; (5) an amendment to prohibit the issuance of securities by public utilities until after the securities have been approved by the commission; (6) an amendment limiting the life of charters and franchises of public utilities to fifty years, as in the federal water-power act; (7) an amendment which will as far as possible, without violating the federal Constitution, give the commission jurisdiction over affiliated interests and holding companies operating utilities in Pennsylvania; and (8) an amendment on rural electrification to empower a group of people in a rural community to build and operate their own distribution lines and require the utility to sell them service at a central switchboard.[13]

The state corporation commission of Virginia was granted by the legislature more extensive powers and duties relative to the development of the water-power resources in the state, to the exercise of power of eminent domain by water-power companies, and to the construction of dams and other structures used in water-power development.[14] "Common carriers" in the field of motor transportation were brought under the control of the state corporation commission, as to rates, fares and charges, schedules, quality of service, uniform accounts, annual reports, and safety devices. Certificates of convenience and necessity must be secured from the commission before operating as a common carrier. In determining whether the certificate shall be granted, the commission is required to consider, among other things, "the effect on existing transportation, revenues, and service of all kinds, and particularly whether the

[13] *U. S. Daily*, April 8, 1932.
[14] Virginia, *Acts of the Assembly*, 1932, Chap. 345.

granting of such certificate will or may seriously impair such existing service."[15] That the grinding of grain is a public utility affected with public interest was recognized by the legislature through an act extending to the corporation commission authority "to promulgate rules and regulations . . . and to fix and establish from time to time such rates of toll as in the judgment of said commission may be reasonable and proper."[16]

The extent to which a legislature may by resolution direct the action of the public service commission in rate-making was brought up in an interesting manner in West Virginia. A resolution adopted by the house of delegates of the state legislature called upon the public service commission "to start downward revision of all public utility rates in line with the reduction in general business and in conformity with the spirit of the times." The commission informed the legislature that the latter had not conferred, and could not legally confer, upon the commission power "to order a wholesale reduction in public utility rates, arbitrarily, without regard to actual operating costs of each company whose rates are to be affected and without according such companies the right to be heard."[17]

Taxation. Two acts were passed by the Kentucky legislature relative to taxing motor vehicles. The first is an excise tax imposed "for the privilege of using the highways."[18] The tax is a graduated excise tax beginning with one-fourth of a cent a mile upon vehicles carrying not more than seven persons, and increasing to three cents a mile for vehicles carrying thirty or more persons. The tax is increased one hundred per cent upon such motor vehicles as escape the annual registration fee because of being engaged in interstate commerce. A graduated excise tax is also imposed on motor vehicles engaged for hire in transporting property. The collection of the tax is entrusted to the state tax commission. An additional tax is imposed upon motor vehicles for hire, used primarily for the transportation of persons and operating between fixed termini and over a regular route under a certificate of convenience and necessity. The tax on such vehicles with a seating capacity of not more than seven persons is $3.00 for each passenger seat, 50 cents for each 100 pounds of gross weight, and $10.00 for the bus tags. The tax on the seating capacity on vehicles capable of carrying more than seven persons is $7.50.[19] A bill providing for a tax on electricity and gas was defeated by the house.[20]

The Louisiana legislature passed an act levying a tax of two per cent upon the gross receipts of power companies.[21]

[15] *Ibid.*, Chap. 358.
[16] *Ibid.*, Chap. 421.
[17] *U. S. Daily*, Aug. 10, 1932.
[18] *House Bill No. 79*, Art. IV, Sec. 10.
[19] *House Bill No. 815.*
[20] *U. S. Daily*, March 13, 1932.
[21] *Ibid.*, June 13, 1932.

The Mississippi legislature imposed a tax upon the privilege of engaging in certain businesses. The tax upon utilities is as follows: (a) a tax equal to two per cent of the gross income of a water system, a street railway, telegraph, telephone, railroad, express, pipe lines, motor vehicles, and gas and electricity sold for purposes other than industrial, and (b) on gas and electricity sold for industrial purposes, one per cent on the gross income.[22]

A "rolling stock tax" was imposed by the Virginia legislature upon motor vehicle carriers. The state corporation commission is required to "assess the average value of the rolling stock of each such motor vehicle carrier habitually used in this state." The tax levied upon such property is to be "at the rate of two dollars and fifty cents on each hundred dollars of assessed value. . . ."[23] The distribution of the receipts from the tax among the units of local government is of special interest. Each carrier is required to report the miles traveled in each county, city, and incorporated town. The state corporation commission determines the proportion of the total vehicle miles operated by each carrier for each county, city, and incorporated town, and upon that basis distributes the total revenue received from the tax to the several units of local government to be used by them "for the general purposes of local government."[24] The legislature of Virginia also imposed a license tax of seventy cents per one hundred pounds of weight upon motor vehicles engaged in carrying passengers or property for hire, plus a road tax of two per cent upon the gross transportation receipts from the business conducted within the state.[25]

Municipal Ownership. The granting of new, or the increasing of old, powers relative to the ownership and operation of utilities by municipalities appears in the legislation of several states.

The legislature of Indiana, in special session, gave considerable attention to municipal ownership. A bill was passed[26] and signed by Governor Leslie authorizing municipal corporations to lease or buy any electric light and power plant and electric distributing system to which it had granted a franchise. The act provides, among other things, that the principal and interest of bonds issued by the municipality for the purchase of the utility "must be paid solely and exclusively from the income and revenue of such utility, and must not constitute an indebtedness of such municipal corporation;" that rates charged to consumers, including the city, "must be adequate and reasonable, as determined by the public service commission;" that in case of default in any payment of interest

[22] Mississippi Legislature, *Emergency Revenue Act of 1932, House Bill No. 328.*
[23] *Acts of Assembly*, Chap. 339, Sec. 1, c.
[24] *Ibid.*
[25] *Ibid.*, Chap. 360, Sec. 6.
[26] *Senate Bill* No. 366.

or principal, a receiver shall be appointed by the court, or a court order for the sale of the plant may be made; and that approval of the public service commission must be obtained for the issuing of bonds for the lease or purchase of the utility.

The Municipal Rights League of Indiana, composed largely of mayors of cities, was successful in securing the passage of two bills in both houses providing that municipally owned utilities should be taken entirely from the control of the public service commission, and that complete control should be vested in the city council.[27] The bills further permitted the setting up of a second public utility in competition with an existing privately owned plant. Governor Leslie vetoed both bills on the ground that it was unwise to free municipal plants from state regulation and supervision. He feared that such complete home rule would "open the way for the sale of an unlimited amount of utility equipment to municipalities." He held that the unregulated right of a city to build a plant in competition with one which is giving entirely adequate service at reasonable rates would "constitute a perpetual threat of confiscation of the property of any privately owned public utility now giving adequate service in the state of Indiana." The governor declared that "this provision violates every sound principle of public utility construction, operation, and regulation."[28]

The legislature of Kentucky passed an act enabling cities of the second and third classes to construct, operate, and maintain municipal light, heat, and power plants, under the management of a local commission or board. The payment of principal and interest on bonds issued for financing the utility is to be made only from earnings of the utility and can never be made a charge against the general credit of the city.[29] An act was also passed giving to cities of the second, fourth, fifth, and sixth classes rather extensive powers to "purchase, establish, erect, maintain, and operate gas (natural, or artificial, or both) and/or electric plants, or works, for furnishing of heat, light, and power to the said cities and the inhabitants thereof."[30]

The privilege of supplying electricity to territory adjacent to the municipality was granted by the South Carolina legislature to municipalities, as follows: "Any municipality operating its own plant or transmission system, if granted by the commission a certificate of convenience and necessity, . . . may extend its lines and electrical service into any territory adjacent to such municipality, as well as into any nearby city

[27] *House Bill* No. 682; *Senate Bill* No. 417.

[28] Governor Leslie's veto memorandum, published in the *U. S. Daily*, August 23, 1932.

[29] *House Bill* No. 123; *Senate Bill* No. 248.

[30] *House Bill* No. 149.

or town, if there is no electrical utility then operating in such city or town."[31]

Conclusions. The year 1932 marks an increase in the tendency to bring motor vehicles under more complete control of state commissions, to the end that a fairer competitive situation between motor and rail transportation may be created and that motor carriers may pay, in the form of excise or road taxes, an amount more nearly sufficient to meet the additional cost of construction and maintenance of roads caused by motors on the highways. The year marks also an increase in the tendency to place an excise tax on utilities measured by the gross revenue receipts. The fact should not be overlooked, however, that such taxes are added to the overhead costs of the utility which are included in the rates paid by the ultimate consumer. There was apparent during the year, too, the spread into new fields of the movement to authorize municipal ownership and operation of public utilities. Such municipal ownership and operation, however, in most instances was properly subjected to state control and supervision. All told, the cause of adequate regulation of public utilities seems to have gained rather than lost ground during 1932.

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[31] South Carolina, *Act Regulating Electrical Utilities*, 1932, Sec. 2 (v).

Who Should Reorganize the National Administration? The controversy of last winter between a Republican President and a Democratic Speaker of the House of Representatives over the President's suggestion that he be authorized by Congress to reorganize the national administrative departments, subject to a veto within sixty days by Congress, calls to mind the fact that during the past twenty years opinion has been almost unanimous in favor of thoroughgoing administrative reorganization, although no legislation going this far has been enacted. Of the various plans proposed, some have been extensive, contemplating complete reorganization of the executive departments, while others have been devoted to special phases of the problem. But on one point all agree, namely, that the national administration must be reorganized before it will function with the desired economy and efficiency. Now, after years of delay, the problem comes to the fore with renewed vigor. Stimulated by the urgent need for economy in federal expenditures, Congress, the President, and the public are again agreed that reorganization is highly desirable as a means of balancing the budget and securing greater efficiency in government. What is to come of it? Are we to have another investigation, another reorganization proposal, and then, as hitherto, fail to see the desired changes put into effect? In view of past failures to achieve any important alteration and improvement in the national administrative machinery, it seems worth while to analyze the whole problem with a view to pointing out satisfactory means by which the desired end might be reached.

In considering the general problem of how to secure reorganization of the federal administration, there are two distinct questions to be answered: (1) How should reorganization be planned? (2) How should the plan be put into effect? Since various schemes have been suggested, it may at first seem that this article should be concerned only with the question of putting them into effect. But the close relationship between the means of securing data on which to base reorganization plans and the growth of opposition to the adoption of such plans makes it proper to consider the means of planning reorganization as well as methods of putting it into effect. If the President is to make changes in the administrative organization solely or largely on the advice of cabinet officers and bureau chiefs, few important transfers and no general reorganization are likely to take place. At the same time, Congress has proved itself unable or unwilling to act in this matter on the advice of the President, of its own investigating committees, of cabinet officers and bureau chiefs, or of impartial experts outside the government service. The question is: Are any of the various agencies which might devise plans for adminis-

trative reorganization in a favorable position to secure adoption of such plans by either the President or Congress? To determine this, we may review the various methods by which reorganization plans have been devised in the past, and consider also the advisability of turning to new sources for recommendations of this kind.

1. Methods of Planning Reorganization Hitherto Employed. The present movement for reorganization of the administrative branch of the national government dates from 1910,[1] when President Taft asked Congress for an appropriation of $100,000 "to enable the President to inquire into the methods of transacting the public business—and to recommend to Congress such legislation as may be necessary to carry into effect changes found to be desirable that cannot be accomplished by executive action alone." The President's Commission on Economy and Efficiency, which was appointed as a result of the ensuing Congressional authorization and appropriation, made the earliest comprehensive and systematic investigation of the administrative branch of the national government, and prepared a number of reports among which were specific recommendations for reorganization. These reports were transmitted by the President to Congress with his approval,[2] but no action was taken upon them. The commission never finished its work, being abolished in 1913; but its recommendations called for a thorough reorganization, and form the basis for the various reorganization plans prepared since that time.[3]

Various members of the President's commission continued their efforts to secure desired reforms after the commission as such had been abolished.[4] This example led to increased activity on the part of other persons and associations interested in administrative reform, resulting in the adoption of the national budget system in 1921 and continued appeals for

[1] As early as 1824, a House Committee reported on *Reorganization of the Quartermaster's Department* (18th Cong., 2d sess. H. Rept. 4. Ser. No. 122); while in 1830 a select committee of the Senate reported on *Reorganizing the Executive Departments* (21st Cong., 1st Sess. S. Rept. 109. Ser. No. 193); in 1842 a select committee of the House reported on *Retrenchment—Reorganization of the Executive Departments* (27th Cong., 2d Sess. H. Rept. 741. Ser. No. 410); and in 1893 the Dockery-Cockrell Joint Commission reported on *Executive Departments, Reorganization, etc.* . . . (53d Cong., 1st Sess. H. Rept. 49. Ser. No. 3158). For a summary of these early investigations, see Gustavus A. Weber, *Organized Efforts for the Improvement of Methods of Administration in the United States* (Institute for Government Research, 1919).

[2] For a complete list of these reports and the President's messages concerning them, see Weber, *op. cit.*, 94-103.

[3] The alteration in the executive departments in 1913, resulting in the creation of a Department of Labor, was in no way connected with this movement for administrative reorganization, being more in the nature of a grant of labor representation in the President's cabinet.

[4] Notably Drs. Frederick A. Cleveland and W. F. Willoughby.

reorganization of the executive departments. The activity leading up to the passage of the Budget and Accounting Act also brought results in the direction of general reorganization. Congress again determined to investigate the whole problem, and by a joint resolution of December 17, 1920, amended May 5, 1921, created a Joint Committee on Reorganization, with a representative of the President to act as the committee's chairman. Two official plans resulted, one being prepared by President Harding and his cabinet, the other taking the form of the committee's official report to Congress.[5] The President's plan served as a basis for the hearings of the Joint Committee on Reorganization, and the committee's final recommendations to Congress were, in fact, modifications of it. The publication, in 1923, of a volume, *Reorganization of the Administrative Branch of the National Government*, was especially timely, and this and other work of W. F. Willoughby and the Institute for Government Research was of large importance in the preparation of official plans for reorganization. The National Budget Committee also published a plan at this time.[6] Nothing resulted from this renewed activity, however, because Congress again took no action to put any of the recommended changes into effect. During the next few years, various bills pointing toward reorganization were introduced but failed to attract any strong support in Congress.[7]

In December, 1931, Congress was confronted with the problem of balancing the budget, which had suffered a deficit of more than a billion dollars in the fiscal year 1931 and threatened an even greater deficit in the coming year. Its response was a renewal of the clamor for reorganization as a means of securing increased economy and efficiency in the national administration. In the House of Representatives, the Committee on Expenditures in the Executive Departments conducted lengthy hearings on proposals to unite the War and Navy Departments into a Department of National Defense.[8] For many days the committee was unable to reach any conclusion, and in the end it did not recommend any reorganization of the two departments. Meanwhile, a special Economy Committee was

[5] Both plans are included in the *Report of the Joint Committee on Reorganization*, S. Doc. No. 128, 68th Cong., 1st Sess.

[6] *A Proposal for Government Reorganization* (1921).

[7] For example, Senator Smoot, of Utah, introduced a measure in 1925 to provide for the creation of a reorganization board (S. 1334, 69th Cong., 1st Sess.); Representative Mapes, of Michigan, introduced a similar measure in the same year (H.R. 4770, 69th Cong., 1st Sess.); and Representative Davey, of Ohio, introduced a bill to enlarge temporarily the power of the President for purposes of reorganization (H.R. 4798, 69th Cong., 1st Sess.).

[8] *Hearings on Bills to Create a Department of National Defense* (72d Cong., 1st Sess.).

created in the House of Representatives to consider the whole subject of administrative reorganization in its relationship to the reduction of items of appropriation under consideration by Congress.[9] Despite assertions of the protagonists of this investigating committee that coming administrative reorganization would result in a saving of several hundred thousand dollars in the next fiscal year,[10] the experience of committees which had considered the subject in the past, and the brief time allowed the Economy Committee[11] to operate, practically precluded hope of important achievement. In its report to Congress, on April 25, 1932,[12] the committee suggested a few changes in administrative organization, and also recommended that the President be given wide powers "in order to deal with the problem expeditiously." These recommendations were generally accepted, and the Economy Bill, approved June 30, 1932, provides for one or two specific changes in departmental organization and authorizes the President to transfer and regroup administrative bureaus by executive order, subject to a sixty-day veto by Congress. Thus, under the present law the initiative for reorganization rests with the President.

This brief résumé indicates that plans for administrative reorganization have been prepared in five different ways: (1) by a commission appointed by the President on the authority of Congress; (2) by the President and his cabinet; (3) by a congressional joint committee working with a representative of the President; (4) by a House economy committee; and (5) by unofficial bodies such as the Institute for Government Research.

2. *Difficulties of the Task.* The general principles of reorganization have long since been fairly well established, and it is generally agreed that our national administration does not conform to these accepted principles. At this point, a hitherto insurmountable obstacle arises. What specific changes should be made in the existing departments, bureaus, and services to make the whole organization conform to accepted principles? The answer must come from an examination of the existing organization; and, almost without exception, the officers of various government services are ready to testify in favor of reorganization in general but against reorganization whenever it threatens to alter their own particular department, bureau, or agency. Mr. Hoover, when secretary of commerce, said: "I do not

[9] Created by H.Res. 151, Feb. 24, 1932.

[10] *New York Times*, Feb. 25, 1932.

[11] The committee expected to operate forty-five days as compared to the President's Commission on Economy and Efficiency, for which two full years (1911-12) did not serve, and to the Joint Committee on Reorganization, which carried on its investigations for three years (1921-24) before making its final recommendations to Congress.

[12] *To Effect Economies in the National Government*, 72d Cong., 1st Sess., H. Rept. No. 1126.

believe that any government reorganization will ever take place that will meet with agreement among the existing heads of the government. Cabinet heads necessarily take color from their subordinates, and subordinates are, from the nature of things, bound to be in opposition to serious change. . . . The men who are at the head of various bureaus and secondary functions of the government believe honestly and earnestly in the purpose of their service, and they are bound to object to any change which seems to them would decrease their activities, reduce their personnel, or require them to take a less important position in some other grouping. They naturally and properly feel that the service which they direct is the most important function of the entire government and that minimizing it in any direction would be wrong."[13]

The difficulty of securing unbiased testimony from the officers of the administrative branch of the national government on the problem of reorganization has always been apparent. To assist the President's Commission on Efficiency and Economy in 1911-13, a board of referees was appointed, which consisted of government officials selected by the President for the purpose of considering interdepartmental disputes, conflicts of jurisdiction, and other such matters. To assist the Joint Committee on Reorganization in 1921-24, a representative of the President was given membership on the committee. "I realize," said Senator Harrison, of Mississippi,[14] "that it is very difficult to reduce the number of employees in any of the bureaus of the government, that it is a very hard task for the Congress to undertake to coördinate the work of the bureaus and various functions of the different agencies of the government. I know the influence that will be brought to bear on the joint committee and certainly on the representative who will be designated by the President to represent him on the joint committee or to advise the joint committee. The heads of the various bureaus will come to him and no doubt give him a great deal of worry in soliciting his influence with the joint committee in restraining the committee from coördinating the work of various branches of the Government." "I knew," said Senator Smoot, of Utah,[15] "that, without the assistance of the Executive and complete coöperation with him, and also coöperation with the heads of the departments, no matter how hard the joint committee labored and no matter what information they brought to Congress as a result of their investigation, if the heads of the departments were opposed to the recommendations made by the committee, and particularly if the Executive were opposed to them, it would be next to impossible to get any legislation through Congress to

[13] *Hearings Before the Joint Committee on Reorganization*, 68th Cong., 1st Sess., 350.

[14] 61 *Cong. Record*, 430. [15] *Ibid.*, 431.

make the necessary changes we all know must be made. Therefore, months ago I suggested to the President that he should have a representative to act and coöperate with the joint committee."

To secure full coöperation of the administrative branch of the government in the preparation of a plan for reorganization, the joint committee made the President's representative, Walter F. Brown, its chairman and, furthermore, delayed action in order to give the President time to prepare and submit to it recommendations for reorganization. This resulted in the preparation of the so-called "President's plan," which was submitted to the committee by President Harding with a letter declaring that the proposed changes in the existing organization of the government departments were "suggested after numerous conferences and consultations with the various heads of the executive branch of the government." The plan was in the form of a chart entitled *Scheme for Reorganization of the Executive Departments Suggested by the President and the Cabinet*.[16] Concerning this plan, President Harding said: "These changes, with few exceptions, notably that of coördinating all agencies of national defense, have the sanction of the cabinet";[17] and President Coolidge, later referring to the same reorganization scheme in his annual message to Congress, declared: "With the exception of the consolidation of the War and Navy Departments and some other minor details, the plan has the general sanction of the President and the cabinet."[18]

These assurances that the administration was in support of the President's plan of reorganization did not prevent cabinet officers and their subordinates from appearing before the joint committee to protest strongly against changes affecting their own departments. For example, Navy Department officials opposed the transfer of the Hydrographic Office and the Naval Observatory from their control,[19] despite the fact that the President's plan provided for such a transfer and was "prepared after numerous conferences and consultations with the various heads of the executive branch of the Government." The situation was summed up by Walter F. Brown, chairman of the joint committee, when he said: "The only change with respect to the navy that the secretary of the navy even appeared to consider favorably was the proposal *to add to the Navy* the Coast Guard Service."[20] Nor were War Department officials hesitant about appearing before the committee to condemn recommendations af-

[16] Published as S. Doc. No. 302, 67th Cong., 4th Sess.; also included in *Report of the Joint Committee on Reorganization, op. cit.*

[17] In his letter submitting the chart on reorganization (*Report of the Joint Committee on Reorganization, op. cit.*, 33).

[18] Message of Dec. 6, 1923.

[19] *Hearings Before the Joint Committee on Reorganization, op. cit.*, 143-199.

[20] *Ibid.*, 148.

fecting that department. They opposed the transfer of the Bureau of Insular Affairs, the river and harbor section of the Office of the Chief of Engineers, and other such non-military services from the War Department to the proposed Department of Public Works and other departments.[21] On being cross-examined by members of the joint committee, the secretaries of these departments declared that, although the President's plan had been discussed in cabinet meetings and had been published and submitted to Congress as a "scheme for reorganization of the executive departments suggested by the President and the cabinet," they had never agreed to specific changes in their departments and felt at liberty to oppose them before the committee.

There may be some question as to whether or not the officers seeking to shield their own particular activities from the effects of proposed administrative reorganization are always earnestly and honestly motivated for the best interests of the government as a whole, but there is no doubt that arguments against change are always advanced by the officers of particular services of the government. Nor do such arguments come only from interested administrative officials. In addition to their protests, opposition appears from the paid propagandists of organized groups interested in the activities of particular government bureaus. In 1923, for example, organized labor protested against the proposed transfer of the Children's Bureau and the Women's Bureau to a new Department of Public Welfare. The proponents of a Department of Education opposed the creation of a Department of Welfare, while prominent educators announced their opposition to additional federal supervision of education through the creation of any new administrative department. Likewise, various medical associations came out against the proposal to create a Department of Public Health.[22]

In view of such opposition, it is not surprising that the joint committee modified the President's plan and, in its report to Congress, declared that, "due to a variety of reasons," it was unable to concur in all the suggestions coming from the Chief Executive, but felt that the modified proposals "which are now made go directly to the point of correcting, so far as it is now possible for Congress to do so, the most prominent faults which characterize the organization of the executive branch of the government."[23] Nor is it surprising that Congress took no action toward passing the necessary laws to reorganize the executive departments. Indeed, the report of the joint committee and the reorganization bill sub-

[21] *Ibid.*, 107-142.

[22] Lloyd M. Short, *The Development of National Administrative Organization in the United States* (Institute for Government Research, 1923), p. 467.

[23] *Report of the Joint Committee on Reorganization, op. cit.*, 12.

mitted with it were not even accorded the courtesy of serious consideration by Congress.[24] The multiple opponents of various phases of reorganization had smothered the whole idea so that there was no possibility of enacting all, or even the most important parts, of the proposed scheme.

This difficulty of obtaining unbiased testimony with regard to the administrative branch of the government has led to the retention by Congress of the Bureau of Efficiency, despite the fact that it is generally well known that the bureau is itself a duplication of other administrative agencies. In 1913, Congress desired to continue some of the work of the President's Commission on Efficiency and Economy, although it did not care to prolong the life of the commission itself. Consequently, the duty of continuing the investigation of the subject of the establishment of systems for the determination of the efficiency with which government employees perform their duties was delegated to the Civil Service Commission. After having been granted the necessary appropriation to carry on this new activity, the Civil Service Commission placed Herbert D. Brown at the head of this work; and, after a few years,[25] this "division of efficiency" was given independent status under the name of "Bureau of Efficiency." It is through this bureau that Congress, its committees, and individual members hope to secure detailed information concerning the efficiency of the organization and conduct of the various agencies of the administrative branch of the government. The bureau has been relied upon to conduct various special investigations for Congress and for individual members of that body, and it is the principal assistant to any committee created to investigate the problem of reorganization.

3. *The Need for Continuous Planning.* The use of a special agency such as the Bureau of Efficiency in making investigations of the administrative branch of the government has not solved the problem of planning reorganization and putting it into effect. The difficulty is that in every case some form of special investigation has been used to plan reorganization, and special investigations are not suited to this very important task. Congress has attempted to solve by investigation and legislation a problem which arises from its own slipshod methods of assigning new duties to administrative services without regard for sound principles of administrative organization. The past and present custom of Congress has been to delegate a new function to any convenient agency, or, more often, to create a new agency for the task, without regard to the fact that some other agency may already be engaged in related activities. In other words, the reason why fourteen agencies in six different departments have to do

[24] Senator Smoot's motion to consider the reorganization bill was defeated in the Senate (66 *Cong. Record*, 2709).

[25] In 1916.

with shipping is that Congress has assigned various details of the administration of regulation and control of the merchant marine to different agencies without regard for the maintenance of any unified administrative organization to deal with this general function of government. Likewise, the reason for fourteen agencies in nine departments and independent establishments dealing with the construction of public works is a similar failure of Congress to delegate the growing duties of that kind to a single public works bureau or department. The administrative branch of the government has developed through years of accretion in the form of new bureaus, independent establishments, boards, and commissions created to administer new activities of the government; and, once established, the various units of the government have often acquired new duties, with the result of increased duplication and lack of correlation in administrative activities.

A general rearrangement and transference of these misplaced administrative activities and uncorrelated agencies is indeed highly desirable, but a special investigation to plan such a reorganization is not the best approach to the problem. In the first place, a special investigation suffers from having a definite time limit, when what is needed is continuous study and continuous planning, not only to correct existing defects but also to prevent their development in the future. One of the major functions of a planning agency should be to advise Congress and the President concerning the proper agency upon which to confer duties arising out of new legislation, and thus to prevent the careless and illogical assignment of parts of the same general function to a number of different agencies. Obviously, a special investigation might lead to recommendations to remedy the existing situation without striking at the root of the evil. The fundamental step in securing a sound administrative organization in the national government would be the establishment of some method of continuous planning which would prevent the development of duplicating and overlapping activities with the change and growth of governmental functions.

One of the advantages of getting away from special investigations would be the elimination, largely, of the disastrous results of conflicting testimony, which has been a source of confusion to those attempting to devise schemes of reorganization in the past. Vested officials and interested groups can for a time check all action on reorganization by drumming up a variety of objections to proposals under consideration. But if an agency continuously studied the administrative organization with a view to recommending changes to eliminate duplications and overlaps in administrative activities, no sudden outburst of opposition would be likely to confuse its operation or completely block its recommendations. At the same time, a continuous investigation conducted by the proper agency

would not suffer the difficulty encountered by special investigations in the matter of obtaining information. Constant contact with all administrative operations would eliminate the problem of breaking the ground for each special investigation. As will be pointed out later, it is entirely feasible to maintain such constant supervision of administrative activities without the creation of any new planning agency.

Administrative reorganization is a task too large to be planned by a special investigation. The fact that the President's Commission on Economy and Efficiency never completed its work, and that the Joint Committee on Reorganization was in existence three years before reporting to Congress, indicates the immensity of the task. Yet the labor of these two investigations has been largely lost because of failure of Congress to take immediate action on recommendations resulting from them. By the time when a new movement for reorganization appears, such as we are now witnessing, the whole problem must be reopened with a new investigation, which, partly because of renewed opposition and partly because of the difficulties encountered in determining what reorganization is needed, ends in another complete failure to achieve any far-reaching change. The problem of attaining thoroughgoing reorganization will be solved but slowly at best; and past experience indicates that special investigations are largely wasted effort because of the fact that their proposals, once rejected, soon become obsolete and are not constantly before Congress as current recommendations for the betterment of governmental administration.

Lack of perspective is a further weakness of special investigations as compared to continuous planning. In the first place, a special investigation is an attempt to examine the executive departments and establishments at a given time to determine what changes in their organization should be made to prevent duplication of activities and to provide for correlation between them; and no proper consideration can be given to changes due to new developments in administrative activity. Sound organization today would call for reorganization tomorrow, and, without continuous planning, would call for a new investigation to determine the necessary changes. This lack of perspective is apparent in another way. Special studies of the problem of reorganization are often concerned with only one part of the whole administrative branch, as for example the War and Navy Departments, where the main question has been that of uniting the two departments, and little or no consideration has been given to the possibility of transferring certain non-military activities to other non-military departments.[26] It is due to such a lack of perspective of the

[26] See, for example, *Hearings Before the House Committee on Expenditures in the Executive Departments on Proposals to Create a Department of National Defense*, 72d Cong., 1st Sess.

administration as a whole that the heads of departments and bureaus of the government cling so obstinately to every activity under their direction, and feel that any change would be detrimental to the operation of their service.

Not only do special investigations lack perspective; they also suffer from a lack of uniformity. In considering the need for administrative reorganization during the life of the Joint Committee on Reorganization, no less than four plans for reorganization were produced, two by private agencies and two by public agencies.[27] Each of these plans differed materially from the others, although all may be said to have been based on the same general principle of grouping unifunctional activities into single departments and correlating the work of different bureaus and services. The lack of uniformity in these contemporaneous plans indicates clearly the lack of uniformity to be expected in plans devised by different official investigations of the administrative organization. Not only would this lead to undesirable changes from time to time, provided the recommendations of the planning agencies could be put into effect, but, worse than that, whenever such investigations considered only one part of the administrative branch, there would be lack of uniformity between the organization of various bureaus and departments, due to the difference of viewpoint of different planning agencies.

4. *The Bureau of the Budget and the General Accounting Office as Potential Planning Agencies.* The need for continuous planning may be met very easily. All that is necessary is for Congress and the President to make use of existing agencies available for the purpose; and their failure to do so in the past is but another indication of their need of advice concerning the current operations of the administrative services of the government. The congressional habit of creating agencies with overlapping and duplicating functions is well illustrated by the creation of agencies to propose changes in the organization of the national administration. When the joint resolution to permit the President to appoint a representative as a member of the Joint Committee on Reorganization was considered in the House of Representatives, Mr. Byrns, of Tennessee, opposed it on the ground that the work of this joint committee was to be but a duplication of the work of agencies in existence or about to be created.[28] Under existing laws, the Bureau of the Budget, the General Accounting Office, and the Bureau of Efficiency are each authorized to

[27] The President's plan, the report of the joint committee, the plan suggested by W. F. Willoughby, of the Institute for Government Research, and a plan proposed by the National Budget Committee.

[28] 61 *Cong. Record*, 941. Mr. Byrns referred to the Bureau of Efficiency and the Bureau of the Budget. The Budget and Accounting Act was destined to be passed within a week.

act in one way or another to investigate the administration with a view to recommending changes in the organization of the various departments and services. The first two of these agencies have never been utilized for this purpose, despite their advantageous position to observe all administrative activities in connection with their general supervision over expenditures; while the third, the Bureau of Efficiency, has functioned to a limited extent as an agency of special investigation, although its operations in this field suffer most of the weaknesses inherent in any special investigation by an agency having no intimate contact with the activities of the administration as a whole.

The Bureau of the Budget was designed to be an agency of the President to recommend changes in the existing organization, activities, and methods of business of the government, as well as to determine upon the assignment of particular activities to particular agencies and to study the problem of regrouping the executive services. Provision was made in the Budget and Accounting Act of 1921[29] for the operation of this bureau in the capacity of the President's staff agency, to supervise and control to some extent, as well as to recommend changes in the whole administrative organization; and it was anticipated by the bureau's sponsors that its studies would result in recommendations from time to time with regard to reorganization which would be transmitted by the President to Congress. At the time of the creation of the bureau, however, the Joint Committee on Reorganization was also created, and the President did not select the director of the bureau as his representative on the joint committee. Furthermore, the Bureau of Efficiency has continued to function, in one way or another, as an agency to investigate duplication in the federal service, and, consequently, this potential phase of the work of the Bureau of the Budget has remained dormant. It may at any time be revived, however, by request from the President for such action.

One of the best recommendations that the Bureau of Efficiency could make with regard to the elimination of duplication would be its own abolition and the transfer of its activities to the Bureau of the Budget. The reason why such a change has not taken place is that Congress has felt the need for a special agency of its own, having given to the President the Bureau of the Budget, which he may use for investigative purposes.[30] Without discussing the long-standing rivalry between the President and Congress, a matter which seems inherent in our presidential system of government, we may admit that Congress is unlikely to give up the Bureau

[29] 42 Stat. L. (1921), 20, sec. 209.

[30] This view was expressed by members of the Economy Committee of the House of Representatives (72nd Cong., 1st Sess.), and statements with regard to the need of Congress for the Bureau of Efficiency as its special staff agency may be found in the hearings of this committee.

of Efficiency unless it becomes convinced that an alternative method of inquiring into administrative activities remains available for its use. Such an alternative agency is available in the General Accounting Office, and good arguments may be advanced to show that this agency is better situated and better qualified to perform the work than is the Bureau of Efficiency.

The Budget and Accounting Act provides not only that the Bureau of the Budget shall conduct investigations for the President, but also that the Comptroller-General "shall make such investigations and reports as shall be ordered by either house of Congress or by any committee of either house having jurisdiction over revenue, appropriations, or expenditures," and that the staff of the General Accounting Office shall furnish aid and information upon the request of any such committee.[31] These two provisions for investigating agencies, coming as they do within the same act, are highly significant. The intention of the framers of these particular sections was that the President and Congress should each be supplied with an agency well qualified and well situated to conduct investigations and recommend changes in the national administrative machinery.[32] Because each of these two agencies, in the conduct of its routine work, maintains constant supervision over expenditures in the executive departments and establishments, and thus supervision over all administrative activities, they were selected for the purpose of reporting to Congress and the President with regard to duplication of activities and the need for regrouping and reorganizing the administrative services to secure greater economy and efficiency in the conduct of the public business.

As potential planning agencies, the Bureau of the Budget and the General Accounting Office have many advantages over the Bureau of Efficiency, congressional committees, or other special investigating bodies, for the reason that they are best situated to do continuous planning and to maintain constant contact with all administrative activities. As the agencies which supervise administrative expenditures and check on proposed expenditures, they regularly perform most of the work necessary to eliminate duplicating and overlapping activities. Evidence that the Bureau of Efficiency is in a comparatively inferior position may be found in its operations in attempting to eliminate duplications.[33] The bureau

[31] Sec. 312.

[32] W. F. Willoughby, formerly of the Institute for Government Research, which was largely responsible for drafting the entire Budget and Accounting Act, told the writer that he had hoped that Congress would utilize the Comptroller-General's staff to assist in the conduct of investigations, and pointed out that Section 312 was carefully worded to make such assistance available to committees of Congress without the necessity of the passage of a resolution or any other such formality.

[33] The work of the Bureau of Efficiency is to assist in the installation of standard business methods in the government service, to prevent duplication of work wherever

maintains a card index of all the major activities of the government for the purpose of checking and preventing duplications in the activities of the various services. In 1919, the chief of the bureau requested the Senate Committee on Appropriations to attach to a measure under consideration a provision requiring all governmental activities to be reported to the Bureau of Efficiency in advance of their undertaking.[34] Upon the failure of Congress to enact such legislation, the bureau sent a letter to each of the heads of the various departments requesting that it "be advised from time to time of all new activities in order that duplications and overlaps might be prevented."[35] Without the authority to compel compliance with this request, the bureau was not in a position to perform effectively the work of checking duplications, or even to keep a complete index of administrative activities; and, consequently, an arrangement was made to coöperate with the Bureau of the Budget in this task. In 1922, the Bureau of the Budget, having the necessary authority,[36] issued a circular which requires the head of a department or establishment to report to it the character, scope, and probable duration of any new activity of research or investigation, and states that the agency proposing to undertake such work will be advised "as to what work of the same or similar nature has been or is being done by any other department or establishment," in order to prevent duplication of work.[37] To make use of the index maintained by the Bureau of Efficiency, the Bureau of the Budget has regularly transmitted to that service all reports of new investigations or other research activities, to be checked against the index. Consequently, the Bureau of Efficiency reports to the Bureau of the Budget on duplications and overlaps, and the latter agency deals directly with the administrative services concerned in such activities. Obviously, as far as this work is concerned, the Bureau of Efficiency is operating as a division of the Bureau of the Budget and might well be united with it.

Besides the advantage of their positions as agencies to supervise and control the fiscal activities of the administrative services, another reason why the Bureau of the Budget and the General Accounting Office should

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possible, and to make studies of personnel requirements for various branches of the government, as well as to study problems assigned to it by Congress, its committees, or individual members. *Annual Report of the United State Bureau of Efficiency*, 1930, p. 2.

[34] Attached to the Deficiency Act approved March 4, 1919. The provision passed the Senate, but was stricken out in conference.

[35] *Annual Report of the United States Bureau of Efficiency*, 1920, p. 9.

[36] Section 213 of the Budget and Accounting Act provides: "Under such regulations as the President may prescribe, every department and establishment shall furnish to the Bureau [of the Budget] such information as the Bureau may from time to time require. . . ."

[37] Budget Circular No. 77, Aug. 11, 1922.

become the principal agencies to investigate administrative organization and activities is that one is the agency of the President and the other of Congress. The director of the Bureau of the Budget is appointed by the President without the customary senatorial confirmation,[38] while the Comptroller-General, on the other hand, although appointed by the President with the advice and consent of the Senate, holds office for a term of fifteen years and may be removed only by a joint resolution of Congress.[39] One purpose of the Budget and Accounting Act was to provide the President and Congress, respectively, with agencies to supervise the activities of the administrative services and to recommend means by which the conduct of public affairs might be put upon a more efficient and economical basis. The General Accounting Office was made free from the President's influence, and was intended to be an agency not merely to examine into and pass upon the legality of governmental expenditures, but also to determine and report to Congress mismanagement or inefficiency in the government services and recommend alterations and improvements. The Bureau of the Budget should be utilized by the President for a similar purpose. It should operate as a staff agency to supervise all administrative operations with a view to preventing duplications and overlaps among the various services and recommending possible changes for increased efficiency and economy. Both the Bureau of the Budget and the General Accounting Office should thus serve as continuous planning agencies in the matter of administrative reorganization.

5. *Reorganization by Executive Order or by Law?* The charge has often been made that no reorganization can come from congressional action because of the resistance from government officials and from propaganda by bureaus and others interested in particular activities of the government. "Plausible arguments are made pro and con," said Secretary of Commerce Hoover in 1924,[40] "which can only confuse the members of Congress who are not able to give the time and attention necessary to get to the bottom of these questions." In view of this fact, the suggestion has been made that Congress give to the President authority to make changes in the administrative organization within the limits of certain broad principles which could be laid down by legislation; and, as has been indicated, such authority was granted by the Economy Bill (Public No. 212, 72nd Cong.), approved June 30, 1932. In various public declarations since 1920,[41] Mr. Hoover has urged this means of achieving reorganization, and as president he put the matter before Congress in a special message of February 17, 1932. His recommendations have been accepted in a large measure by Congress. The assumption is that the

[38] 42 Stat. L. (1921), 20, sec. 207.

[39] *Ibid.*, sec. 302, 303.

[40] *Hearings of the Joint Committee on Reorganization, op. cit.*, 352.

President will be more capable of effecting various transfers and regroupings in the administrative branch of the government, and that this grant of authority to him is the most expeditious means of achieving reorganization.

The charge that Congress has been unable to act in the matter is no doubt well founded, but there is some question as to whether the President is free from the influences which have prevented congressional action. While it may be said that "every president from Roosevelt to Coolidge has urged upon Congress a reorganization of the executive arm of the government,"[42] and that President Hoover has repeatedly brought the subject to the attention of Congress, it must be admitted that concrete recommendations and specific plans for reorganization have been infrequent. President Taft, as has been stated, asked for authority to appoint an investigating committee and in 1912 submitted to Congress, with his approval, the committee's recommendations. President Wilson gave specific approval to the movement to establish a national budget system, although he vetoed the first budget act on grounds of unconstitutionality,[43] and spoke of the need for administrative reorganization as a means of securing greater efficiency and economy in government work.[44] President Harding asked that a representative of the President be included in the Joint Committee on Reorganization in 1921,[45] and, as has been stated, submitted to this committee what became known as the "President's plan" for reorganization. But it was generally understood that much of the delay in the preparation of this plan was due to the fact that President Harding could not obtain agreement among the various cabinet officers on the matter. Furthermore, when the plan was finally submitted to the Joint Committee on Reorganization, members of the cabinet and other administrative officers appeared before the committee to attack proposals contained in it. Had the President been determining the actual changes to be made rather than drawing up proposals to submit to a congressional committee, it is likely that the opposition within his official household would have been much stronger.

In the matter of reorganization, there are now two distinct problems. The first arises from the immediate necessity of economy in federal expenditures; the second, and most important one, is the continuous prob-

[42] A compilation of such declarations was issued by the President's secretary in February, 1932.

[43] *Address by Secretary of Commerce Hoover Before the Thirteenth Annual Meeting of the Chamber of Commerce of the United States, May 21, 1925.*

[44] See his *Eighth Annual Message to Congress*, Dec. 7, 1920.

[45] *Second Annual Address to Congress*, Dec. 8, 1914.

[45] In a letter to Senator Smoot, dated April 16, 1921, read on the floor of the Senate, April 18, 1921 (61 *Cong. Record*, 396).

lem of establishing and maintaining an efficient and economical administrative system in the national government. To secure prompt action, there are good arguments in favor of turning the matter over to the President, and it is probable that, to meet the present emergency, certain immediate changes will take place by executive order. But there appears to be no proof that, in the long run, the President will not be greatly hampered, just as has Congress in the past, with regard to reorganization proposals which involve a reduction of the employees or a curtailment of the activities of any of the major departments or bureaus.

What is needed is a better method of planning reorganization. If the proper means were utilized to plan changes in the administrative organization, the fact that "plausible arguments are made pro and con" would be less likely to confuse either Congress or the President. Both need advice in the form of reliable and trustworthy studies of administrative organization and activities, and if each would utilize the proper agencies for this purpose, the question of who should put proposed changes into effect would no longer be as serious as it now is, when Congress distrusts the executive branch as a whole because of past difficulties in obtaining information upon which to consider the problem of reorganization. Congress should turn to the General Accounting Office for information with regard to duplications and overlaps in the administrative organization as well as for advice with regard to changes made by executive order. It could develop a research division free from administrative influence which would be a most reliable and most effective source of information and advice on administrative matters. In a similar manner, the President should rely upon his staff agency, the Bureau of the Budget, to investigate administrative activities and to propose changes in administrative organization.

From the tone of President Hoover's statements, there is some indication that continuous planning on the matter of administrative reorganization may develop. He declares that "the consummation of a comprehensive reorganization at one moment is not in the best public interest. Such reorganization should be undertaken gradually and systematically, predicated on a sound and definite theory of government and effectuated as a result of study and experience gained in the actual processes of reorganization."[46] With the Bureau of the Budget available and most logically situated to render advice and information on the whole matter, it is to be hoped that its potential abilities as an agency to investigate and plan reorganization will be called into action.

PEYTON HURT.

University of California.

[46] Special message on reorganization, February 17, 1932

NEWS AND NOTES

Personal and Miscellaneous

Compiled by the Managing Editor

Plans for the twenty-eighth annual meeting of the American Political Science Association, to be held at Detroit on December 28-30, have been completed and copies of the program have been mailed to all members. It is unnecessary to reproduce here the details concerning arrangements, but the full program will be published, as usual, in the February issue as a matter of permanent record.

The managing editor desires to announce that as a regular practice reprints of articles and notes appearing in the Review are prepared only in sufficient quantity to furnish authors with a reasonable number. Other persons desiring to obtain copies in quantity should communicate with the editor promptly after the appearance of an issue. Matter is ordinarily held in type not longer than ten days after that date.

Professor Robert E. Cushman, of Cornell University, will be on leave during the second semester and will spend several months in Europe.

Professor James W. Garner, of the University of Illinois, has been chosen to serve as reporter on the law of treaties for the Harvard Research in International Law.

Professor Clarence A. Berdahl has returned from his sabbatical leave to the department of political science at the University of Illinois. Most of his time abroad was spent in Geneva, London, and the Scandinavian countries.

Dr. Frederick A. Middlebush, dean of the School of Business and Public Administration and professor of political science and public law at the University of Missouri, returned in August after spending a sabbatical leave of absence in Geneva.

Dr. Henry B. Hazard, chief counsel of the bureau of naturalization, United States Department of Labor, is giving a course of lectures on extradition and interstate rendition at the American University Graduate School.

At the University of Chicago, Drs. Harold F. Gosnell and Harold D. Lasswell have been promoted to the rank of associate professor, and Dr. Frederick L. Schuman to that of assistant professor.

Mr. Louis Brownlow, director of the Public Administration Clearing House, will deliver a series of lectures on public administration during the winter quarter at the University of Chicago.

Mr. Robert M. Paige, assistant director of the Public Administration Clearing House, has been elected secretary of the Governmental Research Association, which will now move its headquarters to Chicago.

Professor Clyde L. King, of the University of Pennsylvania, who has been secretary of revenue of the commonwealth, has been appointed chairman of the public service commission of Pennsylvania by Governor Pinchot. In the first Pinchot administration, Professor King served as secretary of the commonwealth and introduced the present budget system.

Professor Thomas S. Barclay, of Stanford University, is serving as a member of the Democratic state central committee of California, and of the Santa Clara county committee.

Dr. Robert G. Campbell, professor of political science at Washington and Lee University for the last twenty-four years, died suddenly at Baltimore on October 18.

Mr. Hubert R. Gallagher has been appointed acting assistant professor of political science at Stanford University for the year 1932-33. He is giving the courses in administration for Professor Edwin A. Cottrell, who will be at the American University, Washington, D.C., until April, 1933. Professor Graham H. Stuart is acting chairman in the absence of Professor Cottrell.

Dr. Harry W. Voltmer has been advanced to a full professorship at DePauw University. Mr. Hiram Stout has returned to his position at DePauw after a leave of absence of two years spent in graduate study.

Dr. J. Roy Blough, formerly statistician of the Wisconsin state tax commission, has been appointed associate professor of economics at the University of Cincinnati, and is charged with directing the work of students, in respect to public finance, in the course in training for the public service.

Professor Charles E. Martin, of the University of Washington, was appointed by the executive committee of the Institute of World Affairs (formerly the Institute of International Relations) as the director of its sessions at the Riverside meeting held on December 11-16, and devoted mainly to the Manchurian situation and various aspects of the "Stimson Doctrine."

Professor Frank M. Stewart, chairman of the department of government at the University of Texas, has been appointed to a professorship of political science in the University of California at Los Angeles, to take charge of the courses in municipal government and public administration. Professor Charles Grove Haines has been granted a leave of absence for the second semester of 1932-33, and will continue investigations in Washington relating to the development of constitutional law by the Supreme Court of the United States.

The department of political science at Dartmouth College has expanded its work this year by adding a course for freshmen on general political science, thus offering three introductory courses with a total voluntary enrollment of four hundred and fifty students. Two additions have been made to the staff, namely, Mr. Norman W. Beck, instructor last year at Yale, and Mr. Dale Pontius, assistant last year at Harvard.

Hon. Newton D. Baker has become chairman of the American Council of the American Institute of Pacific Relations in succession to Mr. Jerome D. Greene, who has been appointed Woodrow Wilson professor of international politics at the University College of Wales. The chair which Mr. Greene will occupy was established in 1922 in memory of students of the college who lost their lives in the World War.

Professor James T. Shotwell, of Columbia University, has been elected a member of the League of Nations committee on intellectual coöperation. Hitherto, this committee has abstained from activity in the fields of political science and economics, but a change of policy has been adopted and it is now proposed to draw both disciplines into more active international study of such matters as arbitration, the World Court, and the techniques of conference and conciliation in the adjustment of disputes. Professor Shotwell's task will be to establish the contacts of political science with the enlarged tasks of the committee.

Dean William F. Notz, of Georgetown University, is chairman of the board of directors, and R. Wallace McClure, of the Department of State, is secretary of an Academy of World Economics established in Washington, D.C., early in the present year, in affiliation with the American Academy of Political and Social Science. In July, the Academy coöperated with the Institute of Public Affairs at the University of Virginia in holding three round-table conferences on the international aspects of the gold problem.

Copies of the annual report of the Social Science Research Council, appearing this month, are obtainable on request from the offices of the Council at 230 Park Avenue, New York City.

The Institute for Government Research of the Brookings Institution is engaged upon a survey of state and local government in New Hampshire, and a report is expected to be ready within a year. The report of the survey of the state and local government of Alabama made by the Institute has been published as a state document.

The fifty-second annual meeting of the Academy of Political Science, held at New York on November 18, was devoted to "Steps toward Recovery," in respect to such matters chiefly as economy in government, the railroad problem, unemployment, agriculture, tariffs and trade barriers, and banking. The speaker at the annual dinner was Sir Arthur Salter.

At a conference on regional planning, government, and administration in metropolitan areas, held at the Washington Square College of New York University on October 18-19, the subjects for discussion included regional planning, housing, the coördination of public works and services in metropolitan regions, movements toward governmental integration in metropolitan areas, and the displacement of states by political regions. Various organizations, including the National Municipal League, coöperated in the conference, with Professor Alison Reppy, of New York University, as executive director.

Among fellows of the Brookings Institution appointed for the current year, the following are pursuing projects in the field of political science: Robert H. Connery (Columbia), Regulation of the taking of wild game and fish in the United States; Howard A. Mackenzie (California), Public personnel; Harold W. Metz (Yale), The nature of the judicial power under the United States Constitution; Lionel V. Murphy (Oklahoma), The selection of postmasters; and Cecil H. Talbert (Yale), The presidential investigating commission. Dr. Thomas S. Barclay, of Stanford University, consulting fellow, will continue his study of Champ Clark.

Under arrangements made by the founder, Mr. Chester D. Pugsley, six institutes in regional fields of international affairs have been merged with an institute at William and Mary College, and the first session of the consolidated institute took place at Williamsburg on October 18-19. The institutes thus transferred were held formerly at Syracuse University, Earlham College, American University, Brown University, Amherst College, and MacMurray College.

Among assignments in connection with the survey of New Jersey state government directed by Professor Harold W. Dodds are the following:

institutions and agencies, Professor William S. Carpenter; health and tenement house supervision, Professor Walter L. Whittlesey; the attorney-general's office, Professor J. Dayton Voorhees; commission on the revision and consolidation of public statutes, Professor Alpheus T. Mason; highway department, Professor George A. Graham; and motor vehicle department and the department of the secretary of state, Dr. Roy I. Kimmel. Other assignments are in charge of members of the Princeton departments of economics and geography. A composite report, containing the findings and suggestions of the committee members and of the staff as a whole, was to be presented to Governor Moore early in December.

Dr. Ernst Freund, John P. Wilson professor of law at the University of Chicago, died in Chicago on October 20. Born in New York City in 1864, he was educated in the secondary schools of Germany and at the Universities of Berlin and Heidelberg, from the latter of which he received the degree of J.U.D. After his return to the United States, he received the doctor's degree in philosophy (1897) from Columbia University. From 1902 until his death, he taught at the University of Chicago, giving courses in political science and in law. He was one of the organizers of the American Political Science Association, and served as its president in 1916. A profound scholar, a distinguished authority on constitutional and administrative law and legislation, and an inspiring teacher, Professor Freund had a far-reaching influence in academic circles and on public affairs. His academic influence extended beyond the giving of professional training to legal practitioners. Large numbers of graduate students in political science, social service administration, and economics attended his classes, and he showed a keen interest in the special questions which they raised. On the day before he was stricken with a fatal heart attack, he concluded a notable series of public lectures on jurisprudence for the Social Science Division of the University. Although he became one of the most eminent authorities on constitutional law after the publication of *The Police Power: Public Policy and Constitutional Rights* in 1904, his interest gradually shifted to the field of legislation, and a few months before his death he published the summation of years of scholarly research and penetrating insight in this field under the title *Legislative Regulation: A Study of the Ways and Means of the Written Law*. As a commissioner of the National Conference on Uniform State Laws, he had a large share in the practical improvement of state legislation. His particular interests were in statutes dealing with marriage, divorce, illegitimacy, and municipal corporations, and he was the draftsman of several acts on these subjects. Legislative committees, congressional committees, and constitutional conventions called on him for counsel, and his

legal scholarship, judicial temper, and sense of human justice commanded respect for any cause he advocated. In addition to the two volumes already mentioned, his larger contributions to the literature of public law include: *Cases on Administrative Law, Selected from Decisions of English and American Courts* (1911, revised edition 1928); *Das Offentliche Recht der Vereinigten Staaten von Amerika* (1911); *Standards of American Legislation: An Estimate of Restrictive and Constructive Factors* (1917); *Illegitimacy Laws of the United States* (1919); and *Administrative Powers over Persons and Property: A Comparative Study* (1928).

Radio Program of the American Political Science Association. Under the auspices of the Association's Committee on Policy, acting in coöperation with the National Advisory Council on Radio in Education, the following program of radio talks and discussions, on the general subject of Legislatures and Legislative Problems, will be broadcast over the network of the National Broadcasting Company during the first six months of 1933:

(1) January 3, "The Legislative Prospects of 1933," William Hard, Washington, D.C.; Bronson Cutting, United States Senator from New Mexico; Henry T. Rainey, member of Congress from the 20th Illinois district.

(2) January 10, "Prohibition," Howard Lee McBain, Columbia University.

(3) January 17, "The Congress," Robert Luce, member of Congress from the 13th Massachusetts district; Arthur Capper, United States Senator from Kansas.

(4) January 24, "Budgets," Lewis Meriam, Brookings Institution; Joseph W. Byrns, member of Congress from the 6th Tennessee district; John G. Winant, governor of New Hampshire.

(5) January 31, "The Powers of Congress," James M. Beck, member of Congress from the 1st Pennsylvania district; Jesse S. Reeves, University of Michigan.

(6) February 7, "Local Government Legislative Needs of 1933," Henry W. Toll, director of American Legislators' Association; Carl H. Chatters, director of Municipal Finance Officers' Association; Clarence E. Ridley, director of International City Managers' Association; Paul V. Betters, director of American Municipal Association.

(7) February 14, "Congressional Procedure," Frederic A. Ogg, University of Wisconsin; Earl C. Michener, member of Congress from the 2nd Michigan district.

(8) February 21, "Armaments," Admiral William Ledyard Rodgers; Roland S. Morris, University of Pennsylvania.

(9) February 28, "Philippine Independence," J. R. Hayden, University of Michigan; Manuel Roxas, speaker of Philippine House of Representatives; Butler B. Hare, member of Congress from the 2nd South Carolina district.

(10) March 7, "Farm Relief," Benjamin F. Shambaugh, University of Iowa; and others.

(11) March 14, "What is the Matter with the State Legislatures?," Albert W. Atwood, Washington, D.C.; John A. Lapp, Chicago, Ill.

(12) March 21, "Tax Reform," Thomas H. Reed, University of Michigan; Seabury C. Mastick, member of the New York Senate; Mark Graves, New York State Budget Director.

(13) March 28, "The Lobby," James K. Pollock, University of Michigan; Edward B. Logan, budget secretary of Pennsylvania; Edward P. Costigan, United States Senator from Colorado.

(14) April 4, "Allocation of Sources of Revenue Between State and Federal Governments," William B. Belknap, president of American Legislators' Association; Simeon E. Leland, University of Chicago.

(15) April 11, "Power," Clyde L. King, University of Pennsylvania; Morris Llewellyn Cooke, Philadelphia, Pa.; and others.

(16) April 18, "Parties and Pressure Groups," Arthur Krock, *New York Times;* E. Pendleton Herring, Harvard University.

(17) April 25, "Unemployment Insurance," Elizabeth Brandeis, University of Wisconsin; William Trufant Foster, Newton, Mass.

(18) May 2, "The World Court," Philip C. Jessup, Columbia University; E. M. Borchard, Yale University.

(19) May 9, "Aids to Legislation," Henry W. Toll, director of American Legislators' Association; Edwin E. Witte, Wisconsin Legislative Reference Library; DeWitt Billman, Illinois Legislative Reference Bureau.

(20) May 16, "Banking," Henry Parkman, Jr., Boston, Mass.; Marcus Nadler, New York University.

(21) May 23, "Legislative Investigations," Gerald P. Nye, United States Senator from North Dakota; Lindsay Rogers, Columbia University.

(22) May 30, "Unemployment," Frank Bane, American Public Welfare Association; and others.

(23) June 6, "The Governor and the Legislature," Harold W. Dodds, Princeton University; William T. Gardiner, governor of Maine; Hugh Reid, member of the Virginia House of Delegates.

(24) June 13, "The Legislative Product of 1933," Thomas H. Reed, University of Michigan.

The Committee on Civic Education by Radio wishes to call the attention of members of the Association to the reprints of radio addresses already given (as well as to be given), obtainable from the University of Chicago Press at ten cents each. The addresses contain fresh, pertinent, and popularly phrased material on topics discussed in many courses in political science. The Committee suggests their availability for outside reading purposes and as a basis for class discussion. This use may be quite independent of the radio program itself. Reprints of last spring's addresses, such as those by Holcombe on *Why We Have Political Parties*, by Sait on *The Existing Party Alignment* and *The Party Convention*, and by Dewey on *The Place of Minor Parties in the American Scene*, are quite as useful this year, and for several years to come, as at the time of their delivery.[1]

THOMAS H. REED.

University of Michigan.

[1] A complete list of these reprints, up to the first of January, is as follows: (1) Introductory Address: The Twelfth Man, John H. Finley; (2) The Significance of the Coming National Elections, William B. Munro; (3) The Significance of Our State and Local Elections, William B. Munro; (4) Primaries and the Machinery of Their Operation, Charles E. Merriam; (5) The Parties and the Issues, Arthur Krock, Julian Mason, Ruth Morgan; (6) The Campaign and Economic Planning, Stuart Chase, Virgil Jordan; (7) Issues of Foreign Policy, Charles A. Beard; (8) Issues of Domestic Policy, Charles A. Beard; (9) Why We Have Political Parties, Arthur N. Holcombe; (10) The Existing Party Alignment, Edward M. Sait; (11) The Party Convention: Its History, Organization and Work, Edward M. Sait; (12) Results of the Republican National Convention, William Hard, Henry Suydam, Paul R. Leach; (13) The Place of Minor Parties in the American Scene, John Dewey; (14) Results of the Democratic National Convention, Paul R. Leach, William Hard; (15) Issues Between the Parties, Lindsay Rogers, Algernon Lee, F. M. Davenport; (16) Issues Above the Parties, A. R. Hatton; (17) Constructive Economy in the National Government, Louis Brownlow, Carl R. Chindblom, Katherine A. Frederic, William Hard, Henry P. Seidemann; (18) Constructive Economy in State and Local Government, Thomas H. Reed, H. W. Dodds, Luther Gulick, Joseph McGoldrick, Dorothy Straus; (19) What Can Government Do to Prevent and Relieve Unemployment?, Robert F. Wagner, Charles A. Beard; (20) How Can Government Aid Finance and Banking?, John T. Madden, Walter F. Dodd; (21) How Can Government Provide Greater Security in Our Economic System?, Paul Mazur, A. W. Macmahon; (22) Mechanics and Maneuvers of Campaigns, A. N. Holcombe; (23) Why Vote?, Charles E. Merriam; (24) Retrenching in State and Local Expenditures, Murray Seasongood, A. R. Hatton; (25) Redrawing the Boundaries of Local Government, Thomas H. Reed, Howard P. Jones, George S. Counts; (26) Redistributing Functions of State and Local Government, Paul W. Wager, O. Max Gardner, Harry F. Byrd; (27) Reorganizing County Government, Arthur W. Bromage, Leonard D. White, Lent D. Upson; (28) Reforming Financial Methods, Luther Gulick, Harley L. Lutz, Russell Forbes; (29) Reducing and Limiting Local Indebtedness, Carl H. Chatters, C. E. Rightor, Henry Hart; (30) Revising Our State and Local Tax System, W. F. Willoughby, William Anderson, Isidor Loeb.

BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD
Harvard University

Government by Judiciary. By Louis D. Boudin. (New York: William Goodwin, Inc. 1932. Two volumes. Pp. xii, 583; 579.)

Mr. Newton D. Baker, who seems to have the confidence of even that furious conservative Mr. Alfred E. Smith, has recently characterized the Supreme Court as "an adjourned session" of the convention that framed the Constitution. The present Chief Justice of the United States is on record as having once remarked that "the Constitution is what the judges say it is." The eminent professor of constitutional law at Harvard University wrote a few months since: "Nine men in Washington have a pretty arbitrary power to annul any statute or ordinance or administrative order that is properly brought before them. The power is an arbitrary power, even though it may not be arbitrarily exercised . . . in the sense that in the last analysis it is exercised as five or more of the nine men think best." For all such talk Mr. Boudin's volumes afford valuable documentation. They cover the entire history of the Supreme Court's interpretation of the Constitution and deal in detail with many of the famous cases. The copious material quoted comprises little that is strictly new, but known materials are frequently presented in a new light; and while containing some errors of fact and not a few questionable interpretations, as well as several quite uncalled for aspersions on the motives of previous writers, the book is one that should receive attention from students of American institutions.

Mr. Boudin gets off to a bad start by a vigorous but not very successful assault upon the so-called "precedents" for judicial review. His ingenious argument (Ap. C., I, 536-55) to prove that the New Jersey supreme court simply could not have held an act of the legislature void in 1780 in Holmes v. Walton is invalidated by the evidence for what *did* occur (Erdman, *N.J. Constitution of 1776,* pp. 91-2); and his attempt to explain away the North Carolina "precedent" of Bayard v. Singleton is similarly unconvincing (Coxe, 250-1).

Much more relevant to present-day issues is Mr. Boudin's incidental exposition of the way in which judicial review, once started going, has gradually brushed aside all statable limits to its exercise. At the beginning, the doctrine was avowed by the courts that they were entitled to pronounce legislative acts void only in "clear," "very clear," or "obvious" cases. The fact is that such cases have been almost as rare as snakes in Ireland. Were the rule observed, or had it ever been observed, the history of judicial review would have been brief indeed. Again, by

the official doctrine of judicial review, a holding that a legislative act is void is rendered only for the purpose of deciding a case. Yet in fact, such holdings are treated as binding *in futuro* on the other departments of the government until the Court itself chooses to cast them aside. Although Mr. Boudin appears to think that this is a modern development in judicial review, he is mistaken (See e.g. *The Federalist*, 39). Yet again, judicial review requires the theory that the Constitution is complete, and so affords an answer to every question of governmental competence that can be put to it. This manifestly is a mere fiction, and a peculiarly absurd one as regards a constitution which was framed 145 years ago; and at the very outset of the national government the alternative theory that the Constitution has gaps which it is primarily the business of legislation to supply was advanced by no less a person than James Madison (I, 291-4; see also II, 52-3).

Mr. Boudin gives us, in italics, his final verdict regarding judicial review in the following words: "There is a steady absorption of power by the United States Supreme Court at the expense of all other departments of government and of the people themselves" (pp. 548-9). Of the "absorption of power" at least, there would seem to be no ground for rational doubt, and that it has been at somebody's expense is highly presumable.

EDWARD S. CORWIN.

Princeton University.

Justice Oliver Wendell Holmes. BY SILAS BENT. (New York: Vanguard Press. 1932. Pp. 386.)

Mr. Bent's volume on Mr. Justice Holmes seeks to accomplish certain definite objectives. As the author himself states, it attempts "to reflect the environment and to some extent the inner life of a man already recognized as one of the very greatest this country has produced and nourished." It is not a detailed catalogue of minute biographical facts; it is not an analysis of legal and constitutional doctrines. It is, however, an explanation and an analysis of Mr. Justice Holmes himself in terms of his ancestry, the formative influences of his earlier years, the chief milestones in his long career, and the main planks in his philosophy of law and of life. These various elements are hung together on a rough chronological outline and are interspersed with anecdotes and epigrams which give the reader an intimate picture of the man and many a sample of his flashing wit and penetrating insight.

Life on the bench does not commonly afford dramatic material for the purposes of general biography. This fact explains what might otherwise seem to be a somewhat curious distribution of space in Mr. Bent's book. Less than a third of the volume (112 pages) is devoted to the period since

1902 during which Mr. Justice Holmes has sat on the Supreme Court of the United States; while some 70 pages deal with his career on the Supreme Court of Massachusetts. The book is divided into three main sections. The first of these is entitled "Youth and Warrior." Here are presented the facts of Justice Holmes' ancestry, a portrait and appraisal of the senior Oliver Wendell Holmes, together with the Boston and Harvard in which the Justice was reared and educated. Three chapters are devoted to the Civil War service which, Mr. Bent declares, was Justice Holmes' "greatest moral experience." There is ample evidence that his army life left on him an indelible impress. This is reflected both in the constant allusions and metaphors in his vocabulary drawn from the battlefield and the camp and in his life-long conviction that "war, when you are at it, is horrible and dull," but that when time has passed "you see that its ménage was divine." "I hope," he continues, "it may be long before we are called again to sit at that master's feet. But some teacher of the kind we all need." When asked on one occasion for the biographical details of his life, Mr. Justice Holmes replied: "Since 1865, there hasn't been any biographical detail."

Part II, entitled "Jurist and Thinker," covers the period from the Civil War to the accession to the Supreme Court. Here one follows the young law student through Harvard, into the active practice of the law, and finally into a professorship in the Harvard Law School. The publication in 1881 of *The Common Law* established Holmes' enduring reputation as a scholar in the history and philosophy of the law, and from then on there has come from his pen in casual article and judicial opinion a steady stream of writing constituting as important a contribution to American jurisprudence as that of any American jurist. Ascending the supreme bench of Massachusetts in 1883, Holmes began his judicial career of forty-nine years. Mr. Bent makes no effort at a systematic analysis of Judge Holmes' opinions, but contents himself with well selected quotations embodying his attitude toward the law, toward social questions and, more deeply, his legal and personal philosophy. No small part of Mr. Justice Holmes' contribution to the law is the product of his artistic and discriminating use of English, and it is therefore appropriate that the author should devote a separate chapter to "Interpretations," in which a study is made of his subject's precise and accurate use of language and the importance he attached to such accuracy and precision.

The third division of the volume, under the caption of "Statesman and Philosopher," deals with the appointment of Holmes to the federal Supreme Court in 1902 and his work and associations since that time. Here again there is no attempt at systematic summary of achievement, but rather the selection of sentences or paragraphs epitomizing the great

jurist's ripening wisdom and penetrating discernment of the problems of law and life. Perhaps the most interesting of these last chapters is the one on "Holmes and Brandeis," in which the friendship between the two men is described and their viewpoints and temperaments compared. Here Mr. Bent quotes Mr. Justice Holmes' comment: "I'm afraid Brandeis has the crusading spirit. He talks like one of those upward-and-onward fellows." He sums up the two friends with the observation that "one is concerned with social justice in the concrete, the other animated by a large tolerance." There is an interesting chapter on the home life of the Justice, divided between Washington and Beverly Farms, and a final chapter in which a not very convincing comparison between Holmes and Marshall is presented.

In general, it may be said that Mr. Bent's book has genuine value. It has contributed greatly to the published material relating to Holmes' private life, personality, and especially his background and early environment. To those who have known merely that Mr. Justice Holmes is a great judge who has lived so long that each succeeding birthday is a news event of importance, this volume provides a sufficient basis for a fairly adequate acquaintance with the man and his work. And here is a real service; for the more people there are in this country who have some acquaintance with Mr. Justice Holmes the better off we shall be. Furthermore, Mr. Bent's volume is well designed to spread the Holmes gospel, for he has written in a thoroughly readable and engaging style, while the numerous excerpts from the writings of Holmes himself enliven rather than deaden the text. There are some bad mistakes in proof-reading, as the reference to Mr. Justice Billings instead of Mr. Justice Brown on page 267; and Burley v. Alabama instead of Bailey v. Alabama on page 374. One may well question whether the statement on page 274 that "the 'due process' clause was the only fragment of the Fourteenth Amendment still effective when Mr. Justice Holmes began attacking it" takes sufficiently into account the continued vitality of the equal protection of the laws clause. It is not quite accurate to say (see p. 295) that the first federal child labor act "prohibited the interstate shipment of goods made by children less than fourteen years of age," as the prohibitions of the law extended to the products of mines and factories in which such children were employed. On page 297, Mr. Bent certainly implies that the "clear and present danger" test applied by Justices Holmes and Brandeis in free speech cases "was destined in time to become the majority opinion of the Court." That time has not yet arrived. Nor does it seem wholly accurate to say (p. 329) that the O'Fallon decision "enabled the lines to set their own high valuation as against estimates—generous but more moderate—by the Interstate Commerce Commission." None of these errors or doubtful statements

seriously detracts from the value of the book, which is our most readable and useful volume upon one of the great figures of our time.

ROBERT E. CUSHMAN.

Cornell University.

The American Constitutional System. By JOHN M. MATHEWS. (New York: McGraw-Hill Book Co. 1932. Pp. xvii, 468.)

Current emphasis upon a study of the United States Constitution may be responsible for the interest generated in the writing of suitable text-books. To the standard books already in use, the excellent volume by Professor Mathews constitutes a scholarly contribution. It is not merely a text in constitutional law but, as the title implies, a study of the constitutional system of the United States, with adequate attention devoted to "both legal and the governmental sides of the subject," placing emphasis throughout on those "main features and general principles which should be understood by all intelligent citizens and by all careful students of . . . public affairs." This task has been accomplished by the author with rare skill and discrimination.

The broad scope of subject-matter analyzed and discussed in the thirty-one chapters and compressed within the space of approximately 410 pages required judicious selection and condensation of material. In developing the three major parts—principles of the federal system, organization and powers of the national government, and government and the individual—some 550 important court decisions have been analyzed and their underlying principles expounded in lucid style and untechnical language. Moreover, the subject-matter and principles of a far greater number than these have been brought into the ambit of discussion throughout the text for purposes of illustration, comparison, and contrast. Where essential features of the Constitution have not been authoritatively interpreted by the courts, the discussion has been supplemented discreetly by considerations of reason and usage.

Occasional brief excerpts from judicial opinions are well chosen to show either the process of reasoning, a principle of law, or a conclusion reached by the court. Summaries, criticisms, and evaluations carefully synthesized to bring out the principles of law are a most useful feature in every chapter, as is also the brief introduction or survey of the subject-matter and principles involved which serves as an excellent orientation for the discussion which follows.

The author has not allowed any prejudices or pet aversions to creep into his workmanship. He is impartial to a fault. While he has succeeded admirably in compressing an amazing amount of material drawn from many diverse sources and contributed intensive research to enrich the

subject-matter of his book, nevertheless the excellence of his study might have been improved had he cited more cases in the footnotes, and had he given concrete examples, e.g., when, in discussing the jurisdiction of the Court of Claims, he refers to the federal district court (p. 176) as also having "jurisdiction over certain claims against the United States." Grants in aid (which receives a scant page), delegation of legislation, and judicial review of administrative acts deserve fuller consideration than is given them. Footnotes are extremely meager with reference to important magazine articles and standard works to which the reader's attention should be called for the purposes of further and fuller discussion of the subject treated in the text. While the book contains a splendid index and a list of cases used, there is omission of a comprehensive bibliography. Also a special concluding chapter making a survey of the integrating process that has taken place in the fundamental constitutional relation between the national government and the states during the past century would have enhanced the value of the book. In venturing these suggestions, the reviewer has no intention of detracting from the merits of a study which is of decidedly high value. A textbook of this character will undoubtedly be a means of stimulating a sane interest in the study of the Constitution, resulting in a comprehensive understanding of the basic principles underlying the American constitutional system. Professor Mathews' volume deserves a warm welcome and ready acceptance by all college and university teachers of the social sciences.

JOHN P. SENNING.

University of Nebraska.

The Federal Trade Commission. By THOMAS C. BLAISDELL, JR. (New York: Columbia University Press. 1932. Pp. viii, 323.)

Within the last seven years have been published two or three treatises dealing with the Federal Trade Commission from the standpoint of administrative law and business economics. Professor Blaisdell's 300 pages of detail, analysis, and criticism add another to the list. The reviewer, perhaps because he is not a trained economist, does not find a deal of purely economic material that has not been accounted for elsewhere. However, to those who hold the view that the political process is the struggle of interest groups for the control of government in order that they may impose their will upon other groups, Professor Blaisdell's book should be of real interest and value.

The author limits his main inquiry to the answering of two questions (p. vii): "What was the purpose of establishing the Federal Trade Commission?" and "To what extent has the Commission accomplished these purposes (*sic*)?" His answer to the first is, stated affirmatively, that the

Commission was created for securing fair competition in business; negatively, for preventing unfair competition, monopoly, or tendencies in that direction. The methods to be used were investigation and "pitiless publicity," giving counsel to other agencies of government, and the issuing of "cease and desist" orders. All of these methods, to be sure, were to be subject to the great American censor of the ways and means of adjusting society to its environment, namely, the judiciary.

Professor Blaisdell, of course, has attempted to answer the second question from the viewpoint of the groups that named the purpose. After following most assiduously the success of each method, he concludes that the "extent of accomplishment" has been rather insignificant. Criticism rarely points directly to the Commission, however; it is a poor creature subdued by its legal and social environment. The law furnished criteria, such as "unfair competition," which few persons could possibly agree upon; the law made "competition" the final end, when the real end sought was socially desirable results whether secured by competition or not. "However, the most important reason for the Commission's impotence lies in the drift of economic forces as they impinged on the political machinery (p. 289)." In this statement the author and the reviewer agree. It is to the former's credit that he has used a single agency of the executive to make clear the forces behind the action of the entire national government. What could a body created by agricultural and small business interests do toward carrying out the policy of such interests after governmental authority shifted to "big business"—especially when the social lag of the judiciary played into the hands of the latter and obstructed the will of the former?

JOHN P. COMER.

Williams College.

Race, Class, and Party: A History of Negro Suffrage and White Politics in the South. By PAUL LEWINSON. (New York: Oxford University Press, 1932. Pp. x, 302.)

The negro race in the South is the only remaining group of adult citizens in this country that is deprived of the right to vote. The disfranchisement of an entire race, constituting from one-fourth to more than one-half of the total population in the Southern states, is a serious problem. It is hardly possible that such a group, under our form of government, can receive just and impartial treatment. Undoubtedly there is growing up in the South a spirit of toleration between the races, brought on by increasing education, culture, and ability of many members of the negro race. The race issue in Southern politics is fading somewhat from the scene, though Democratic demagogues are ever ready to stir it up if faced with

a serious fight. In the border states of Kentucky, Maryland, Tennessee, and Oklahoma, negroes are permitted to vote in many communities without restraint. In other states, particularly North Carolina and Virginia, the negro is permitted to vote in small numbers, particularly in cities. But in the far South few, if any, negroes, in most communities, are so privileged.

In the volume under review, Mr. Paul Lewinson traces briefly the history of negro suffrage during the reconstruction period following the Civil War. In this part of his work he uses only standard secondary sources, presenting no new information or appraisal. In the second half of the book he presents the political situation in the South today as it bears upon the problem of race in politics. Having traveled through a great part of the South, he is able to give a first-hand account of the attitudes of both races. He finds some encouraging signs that intelligent and educated negroes are being permitted to register and vote in many communities, but, lacking information on this point for previous years, he is unable to determine what are the trends. Statistics on negro voting in the South are unavailable and practically impossible to secure for the present or for any past period.

It is interesting to note that when the negro has voted in the South in recent years it has been at the behest and under the direction of white political bosses. If it were not for the constitutional provisions, it is quite probable that a few hotly contested elections similar to that of 1928 would go far toward restoring the ballot to the negro, with each side soliciting his vote and arranging to make it possible for him to cast it. The author offers no solution or plan, nor does he present much data upon the economic and political effects of disfranchisement upon the negro race. He describes, instead, the history, institutions, and attitudes of the South as bearing upon the problem of negro suffrage.

JOSEPH P. HARRIS.

University of Washington.

Straw Votes; A Study of Political Prediction. By CLAUDE E. ROBINSON. (New York: Columbia University Press. 1932. Pp. xxi, 203.)

This is an excellent survey of the chief agencies now used to forecast the outcome of elections some time before the official balloting. A careful attempt has been made to evaluate the accuracy of these predictions. The politicians, the newspaper men, the state of Maine, straw polls on candidates and issues, and the force of party continuity are all realistically considered. But the bulk of the book is devoted to a description of straw votes conducted by newspapers and other journals, including the *Literary Digest*. Statistical materials are presented clearly in thirty-three tables and six diagrams. There are two appendices and an index. The study is well-

organized, and the materials are intelligently interpreted. The work was done under the auspices of the Columbia University Council for Research in the Social Sciences, and under the direction of Professor Robert E. Chaddock.

The idea that Maine is a political barometer is examined carefully and discarded. The treatment of the politician as a prophet is too limited, but to the point and interesting. The most remarkable newspaper man's prediction examined was made by Thomas B. Cromwell when, in 1916, he forecast that Woodrow Wilson would carry Kentucky by 52.1 per cent of all votes cast. Wilson won the state by polling 52.7 per cent of the total vote.

The value of straw polls on candidates and public questions depends on the reliability of the sample that is used. Is it representative, and is it adequate in size? The three chief methods followed since 1900 are: (1) ballots printed in newspapers; (2) personal canvas; (3) mail. The third method is demonstrably the most accurate, and Mr. Robinson analyzes its value as a measuring tool of public sentiment in nine nation-wide straw polls and in a wide variety of other polls. First of all, he points out the logical flaw found in the best test that can be made of straw-poll accuracy. Sentiment on October 1 may be changed by a Hoover or Smith speech before November 8, and therefore the unofficial vote may vary from the official returns in November and yet perfectly mirror sentiment as of the date of the poll. Causes of divergence are considered at some length. The medial average plurality error per state was least in the Hearst papers' 1928 poll—five per cent in comparison with six per cent error in the corrected, and a twelve per cent error in the uncorrected, *Literary Digest* poll of the same year.

A variety of objections to straw votes are examined—manipulations, ballot-box stuffing, geographical and class bias, size of the poll, and change in sentiment—and the author concludes that much depends on the character and experience of the institution that sponsors the poll. He also concludes that accuracy has been approached more closely in polls on candidates than on issues. "Given a careful application of the gauging techniques here described, the outcome of the elections can be predicted within reasonable limits of accuracy."

JOHN T. SALTER.

University of Wisconsin.

The United States in World Affairs. By WALTER LIPPMANN AND WILLIAM O. SCROGGS. (New York: Harper and Brothers. 1932. Pp. 375.)

With this volume, the Council on Foreign Relations ends the "Survey of American Foreign Relations" published under the direction of Mr.

Charles P. Howland and begins a new series. "The plan has not been conceived as a substitute for those maturer histories which are essential to any true understanding of the present. It is intended rather as a bridge between the past as recorded by historians and the present as recorded and interpreted in newspapers, official documents, and other immediately available accounts." Such a modest disclaimer would seem to disarm in advance all criticism, but, in fact, the above definition applied as fittingly to the Council's earlier "Survey."

What has happened is that system has been sacrificed to topicality and scholarship to facility, in order to attract a wider circle of readers. Mr. Lippmann's name on the cover cannot fail to make the book popular, nor can his pen fail to strike out of his material flashes of insight. Yet, even on its own merits, the experiment fails. The contents by no means fit the title: they wander far beyond the confines of American policy into Central European affairs, last year's British political crisis, and so on. To fit so many subjects into so few pages of generous type could not be done by excessive summary. As a result of such brevity, the account of the British crisis, for example, comes out not so much biased as one-sided. ("The Labor party deposed Mr. MacDonald by a vote of 274 to 6, and on August 24 the Labor cabinet resigned. The king immediately invited Mr. MacDonald to form a new National ministry. . . ."). Through excessive contraction, this passage conveys the impression that Mr. MacDonald was deposed *before* he formed the new ministry, whereas in truth he was deposed *because* he had consented, without consulting the party through which he held power, to lead a National ministry—a very essential distinction for the history and understanding of English politics.

Altogether, it is in the nature of things that such a volume should offer not even as much as one may garner from periodicals; and the standard of achievement is not above what any commercial house might produce. The student of foreign affairs must, therefore, mourn without compensation the passing of a masterly guide. During its brief existence, the old "Survey" had quickly made itself indispensable; and it was the best thing of its kind. It had gone a long way to justify, as the new series never can, the existence of the learned society which produced it.

DAVID MITRANY.

Harvard University.

Philippine Uncertainty. By HARRY B. HAWES. (New York: The Century Company. 1932. Pp. 360.)

Prominent in the movement for Philippine independence was the visit of Senator Harry B. Hawes to the Islands in 1931, a consequence of which was this book of diary-like reminiscence. The volume must be classed as

propaganda for independence, likewise unduly repetitious and vituperative and characterized by anomalies and inaccuracies. The proceeds from the sale of the book in the Islands are being devoted to the Philippine Independence Fund, a vague uncertain amount of which no precise accounting has ever been made.

On page 33, the "alleged 'tribal' difference" among the peoples of the Islands is minimized, without regard to the mountain people in northern and southern provinces and the Moros, and without reference to prevalent dialects not generally or mutually intelligible. The charge on page 50 that "Americans, by their interfering, advising, and directing, are responsible for a good deal of strife in the Islands" raises the question as to what else Americans should be doing during these years if not "advising and directing" and "interfering" upon occasion to correct or ameliorate abuses and mistakes. Perhaps they should be *governing* more directly and rigorously! On page 56, "The Sultan (of Jolo) . . . speaking neither English nor Spanish" is apparently inaccurate, as legislators in Manila and experienced officials connected with the supervision of non-Christian tribes say that the dignitary speaks Spanish. In the following four pages no mention is made of at least one *datu* who approached the Senator with representations opposing independence, and of outstanding Igorote spokesmen who oppose independence, either because they were evaded or deliberately disregarded. The blanket assertion (p. 85) that "Manila Americans opposed . . . replacement of Americans by Filipinos in public offices" is made without any explanation of reasons which might well have been based on qualifications, contracts, and political favoritism, as appears to be the case in the current Manila water works instance. Pages of unfair and inaccurate aspersions on the *Manila Bulletin* give an erroneous impression of the position of that newspaper. An incomplete statement of the racial prejudice extant in the Islands (p. 97) refers only to anti-Filipino sentiments among Americans, and not to equally unreasonable anti-American prejudices of Filipinos in high places. In an effort to magnify the development of education ("Enrollment in these schools is nearly 1,250,000," pp. 161-162), it is not made clear that the number cited is only about one-third of the child population and about ten per cent of the people of the Islands; and it may be remarked that sixty per cent literacy throughout the islands is low rather than high for purposes of estimating readiness to participate in democracy.

Further inadequate arguments for independence evade (p. 178) satisfying discussion of the "Japanese menace," and on page 183 inconsistent emphasis is placed upon fundamental differences between Orientals and Occidentals. The Japanese aspect of the question is discussed further (pp. 205-206) with an inaccurate description of Japanese interests and popula-

tion in the Islands. "Not able to work continuously in the fields" is contrary to fact. Also, "Japanese do not intermarry with Filipinos" is actually, though perhaps not always technically, false. "No significant increase in their numbers" likewise is misleading. "Our continued possession of the Islands makes us parties to the perilous problems of the Orient" fails to recognize that American interests in China contribute materially, if not definitely, to such entanglement. Strange inconsistency is disclosed in the statements (p. 213) that we "could not for any considerable time halt an invasion of the Philippines by a first-class power of the Orient," and (p. 206) that a "Japanese invasion of the Philippines is negatived by the facts." "A Filipino republic" needs only "a service similar to the United States Coast Guard, supplemented possibly by some steamships for the transportation of troops," and "It should depend on the pledges given by the nations to recognize its independence, on its own neutrality agreements, and on the good-will of the world" (p. 217), reveal a lack of appreciation of realities in international politics.

Taking into consideration Senator Hawes' service in the government of the United States and of Missouri, it is surprising to find (p. 278): "The present government of the Philippines resembles Great Britain's colonial system in America during the seventeenth and eighteenth centuries"—perhaps true, but without adequate allowance for the length of time spent thereunder before independence was achieved. "The Jones Law clothes the governor-general . . . with more power in the Islands than the President possesses in the government of the United States or the governor of any of our forty-eight commonwealths wields," is inaccurate with respect to the President and without regard to the long centuries of political experience of the states. Just the reverse of the assertion (p. 285) that Governor-General Wood "felt bound neither by the Jones Law nor President Harding's promise" is the fact, as he deliberately and closely applied the letter of that law. On pages 302 to 305, there is further confusion of thought, and consequent misleading discussion, concerning British "colonies" and "dominions."

In conclusion (p. 311), we find an intolerant description of opponents of independence as "the few and unrepresentative Americans," in which connection the author's criticism of "American officials or prominent persons who visit the Philippines . . . under official tutelage" is interesting. Recollections of Senator Hawes' visit fit precisely into the latter category, although his "official tutelage" was almost exclusively that of Filipino politicians and agitators. With the independence movement so spontaneous and so exuberant as the Senator would have us believe, the passage of the Hare Bill by the House of Representatives in Washington should have been the occasion for demonstrations and popular enthusiasm in

Manila and throughout the Islands. On the contrary, no such acclaim was manifested, and general interest seemed dormant.

W. LEON GODSHALL.

Union College.

Studies in Law and Politics. By HAROLD J. LASKI. (New Haven: Yale University Press. 1932. Pp. 299.)

Mr. Laski has collected in this latest volume twelve essays published variously during the past seven years. Not being dated, they do not enable the reader to discover through them the progress of Mr. Laski's political views in this exceptionally testing time; and covering, as they do, a variety of subjects—from intellectual changes in eighteenth-century France to a forward-looking analysis of the state's authority, from Diderot to Mr. Justice Holmes—they do not lend themselves to close reviewing. But Mr. Laski is fully entitled to claim for them "something like unity by the fact that they express a general attitude in spite of their varying subject-matter." They are, indeed, welded together by his never faltering progressive outlook, as they are all solidly grounded upon his extensive scholarship. Even those of the essays which were obviously written for a wider public surrender in learning no more than they gain in stimulus.

The American reader will find in this volume—dedicated to Mr. Justice Brandeis—many things of special interest. Above all, there is the learned and reverend essay on "The Political Philosophy of Mr. Justice Holmes," originally published elsewhere in this country. Recent incidents give point to the argument on "The Technique of Judicial Appointment," in which Mr. Laski draws upon the experience of both England and America. He protests that executive or parliamentary appointment is apt to be weighted with political bias. The remedy, in his view, might be found, not in transferring to some other authority the prerogative of appointment, but rather in causing the claims of candidates to be first sifted by a representative committee of legal experts. "A recommendation which came to the Senate with such authority would go far to make federal appointments to the bench non-political in character." In "Justice and the Law," he argues that "an attempt, to put it concretely, to make legal teaching in England emulate the spirit of Harvard would, on the basis of experience, built a better type of lawyer." He goes on to plead for an inquiry into the whole problem of legal education in England; and it is a measure of the influence which he wields through his pen that such a committee of inquiry has just been appointed, with Mr. Laski among its members. Of a very different type is the essay on "The Personnel of the British Cabinet, 1801-1924," first published in this REVIEW in February, 1928. It is a purely factual study on the basis of comparative statistics, showing how

heavily the social factor has weighed in the composition of English cabinets. Recent disclosures on the inner history of the collapse last year of the second Labor government make this study piquantly topical. They suggest that the predominance which Mr. Laski proves statistically was due, as de Tocqueville had shrewdly observed, to the fact that English aristocracy built its power, not like the French on exclusion, but rather on selection and assimilation.

One might mention, finally, the two essays on "The State in the New Social Order" and "Law and the State," the first more popular, the second closely argued. In them Mr. Laski expounds anew his pluralistic viewpoint, which in the latter essay brings him to identify himself in regard to the hierarchy of law with the Austrian school of Kelsen. Here Mr. Laski treads more speculative ground. But even where one might wish to join issue with him he remains impressive in the power of his argumentation and in his relentless championship of the cause of social progress.

DAVID MITRANY.

Harvard University.

Responsible Bureaucracy: A Study of the Swiss Civil Service. By CARL J. FRIEDRICH AND TAYLOR COLE. (Cambridge: Harvard University Press. 1932. Pp. xiii, 93.)

In the words of its authors, this monograph is presented as the first of a series of case studies in "systematic political science" intended to contribute to the development of "more useful generalizations" concerning "the important categories or concepts with which the work of comparative analysis has to be carried on." The present study deals with the concept *bureaucracy,* federal Switzerland serving as its *locus operandi.*

Following a suggestive disquisition on the rôle of bureaucracy in a responsible government, the authors develop what they consider to be the essential criteria of the concept: (1) a determinate distribution of offices or functions, (2) the hierarchy, and (3) the determinate qualifications required for the fulfillment of these functions. Political bureaucracy, they righly maintain, is but one *species* of the *genus* bureaucracy, whose presence is inevitable, indeed indispensable, in all phases of large-scale, contemporary social organization. So considered, bureaucracy is held to be in no wise incompatible with democratic institutions.

Four closely packed chapters, forming the core of the study, ably survey the functions, organization, and personnel practices of the Swiss civil service. These chapters give a good working picture of how permanence of tenure in the administration of a small state grew out of the soil, not of monarchy or empire, but of local self-government. Those familiar with French or German experience, however, will note what strikingly similar

problems of personnel management have faced the Swiss—in particular, the insidious intrusion of partisan politics and the insistence of professional staff groups upon the right to share in the elaboration of administrative policy and, as a last resort, to strike in defense of equitable standards of employment. Not only the ideology, but the lines of cleavage in this movement are much the same as in France.

As interpreted by Professors Friedrich and Cole in their concluding chapter, these "impacts upon the hierarchy" call for frank recognition of the advisability of "partial self-government" in the public service if the issue presented by threatened or actual use of the strike is ever to be solved. Governmental bureaucracy, that is, demands an institutional safeguard against inherent abuses of authority, the ultimate goal, perhaps, being a "federative commonwealth of mutual servants."

Whether or not one accepts such an objective as either desirable or feasible, the factual substance of this study fills an important gap in the library of the student of European administration. It is unfortunate, however, that it was not possible to supplement the use of documentary materials with direct inquiries *sur place*. If this had been done, the analysis might have penetrated more closely to the "human behavior" level in reference to the Swiss administrative set-up, instead of being largely restricted, necessarily, to its institutional externals.

WALTER R. SHARP.

University of Wisconsin.

The French Revolution. By PIERRE GAXOTTE. Translated with an Introduction by Walter Alison Phillips. (New York: Charles Scribner's Sons. 1932. Pp. xiv, 416.)

Siéyès: His Life and his Nationalism. By GLYNDON G. VAN DEUSEN. (New York: Columbia University Press. Pp. 170.)

The French Revolution is still less a subject for history than a warring ground for political theorists. M. Gaxotte, whose book has run through eighty-four editions in France, has certainly not contributed to the cause of peace among historians of the subject. His book, in keeping with the latest fashions in historiography, is hardly a narrative at all, but a long pamphlet in defense of what we may call modern French philosophical Toryism. It seeks frankly to "explain" the Revolution in sociological terms. M. Gaxotte has effected a clever synthesis of the ideas of Taine, Augustin Cochin, Funck-Brentano, and—miraculously enough—the late Albert Mathiez.

The first chapters are devoted to praise of the old régime in France. That régime was a trifle unwieldy in its administrative organization, and the quality of its administrators was uneven. But the very clash of au-

thorities preserved much individual, and above all corporate, freedom; respect for custom gave further protection to the individual; the temper of the rulers was generally tolerant; and their relations with the ruled were personal, not bureaucratic. The weakness of the king and the straits of the treasury—due less to maladministration than to such expenditures as those incurred in helping the American colonies—gave foothold for revolutionary agitation. Once the calling of the Estates let down the barriers, the old authority dissolved and the way was clear for the new. This new authority was formed by the *philosophes*; that is to say, it was based on utterly false notions as to human equality, the state of nature, the social contract, and so on. In the struggle to wield this new authority, the best organized, most fanatical minority (the Jacobins) came out on top through the use of typical "pressure group" methods. The short-lived Jacobin dictatorship gave place to a government more suited to the unheroic average Frenchman. But the damage had been done. Frenchmen still wear the scars of that conflict. The Third Republic is still based on the false political theory of the Rights of Man. M. Gaxotte's crowning touch is his insistence that this whole revolutionary process was an attempted dictatorship of the proletariat. France, he concludes, has already gone through one futile communistic revolution, and ought not to be tempted into another. Throughout, M. Gaxotte seasons his history with phrases taken from contemporary politics such as "no enemies to the left" and "general strike."

It is idle to point out that this book is not history. M. Gaxotte has left Ranke's modest "*wie es eigentlich gewesen*" far behind. His *French Revolution,* however, is an indispensable document for the student of contemporary political thought in France. It is a complete statement of the position of the school of "integral nationalism" on what must be the starting point of any modern French political theorist. It is a neater, more definite condensation of the royalist-clerical mythology of the great Revolution than any we possess of the corresponding republican mythology.

Mr. Van Deusen has made the most of an ungrateful subject. Siéyès was not a great original political thinker, nor has he the importance as a disseminator of ideas, as a link between the political theorist and the common man, of a writer like Thomas Paine. For one brief moment the famous pamphlet *Qu'est-ce que le tiers-état* did do the kind of work that *Common Sense* did. But Siéyès' influence soon faded. Like so many of his contemporaries, Siéyès evolved from a theoretical cosmopolitan to a reasonably practical Frenchman, and it is this evolution that Mr. Van Deusen has studied as Siéyès' "nationalism." The chapters devoted to this subject (V, VI, and VII) form the most interesting and useful part of the book.

CRANE BRINTON.

Harvard University.

Canada. By ALEXANDER BRADY. The "Modern World" Series, edited by H. A. L. Fisher. (New York: Charles Scribner's Sons. 1932. Pp. vii, 374.)

In this book, Professor Brady deals with all aspects of Canadian life—political, economic, and cultural. As a full-length portrait of a nation, it compares very favorably with the other volumes of the same series with which the reviewer is familiar. Professor Brady's task was undoubtedly more difficult than that of the authors who had more settled cultures to describe, but he has succeeded in producing a very readable and instructive account of a rapidly developing civilization in which many currents mingle.

The part of the book which describes the political institutions of the country is a valuable contribution to the literature of the subject. No one has yet written the comprehensive treatise on Canadian government which would be welcome to students of comparative government, and Professor Brady does not pretend that his chapters fulfill the need, but they can serve very well as the outline for a more extended treatise. The chapters on associations and the press alone, in which the author shows in a very realistic way how economic and social groups influence the political parties, make the book noteworthy.

The larger part of the volume, dealing with geographical, racial, economic, and cultural matters, may not have as much direct interest for readers of this REVIEW. More of this kind of writing, however, giving a complete picture of the economic and social background against which political institutions should be viewed, might make political scientists more conscious of the necessity of taking into account factors of national character and environment. This broader view, for a more complete understanding of politics, is particularly important with reference to Canada, where geographical and other factors have played so large a part in molding political institutions and policies.

JOSEPH R. STARR.

University of Minnesota.

The Makers of Modern Italy: Napoleon to Mussolini. By SIR JOHN A. R. MARRIOTT. (New York: Oxford University Press. 1931. Pp. xii, 228.)

This very readable book covers the whole period of the Italian *Risorgimento* from 1796 to the present day, and is one of the best primers of the history of Italy during a century which saw such heroic figures as Napoleon I, Mazzini, Cavour, Garibaldi, Victor Emanuel II, and Mussolini. The present volume grew out of three lectures on Mazzini, Cavour, and Garibaldi which the author delivered at the summer meeting of university extension students held at Oxford in August, 1889, and published

the same year. Encouraged by the great popularity of what he calls his "youthful adventure," and urged by his friends, Sir John, who has since attained fame as a scholar, has revised, enlarged, and almost entirely rewritten the original brochure. After tracing in a prologue of fifteen pages the history of Italy from the fall of the Roman Empire to Napoleon I, the book deals with the most significant events in the political history of modern Italy, with chapters on Napoleon's contribution to Italian unity; restoration, reaction, and revolution; Italy and her neighbors; the war and the peace; post-war Italy; church and state; and the Lateran Treaty.

The author assigns to Napoleon I a foremost position among the makers of modern Italy. Mazzini, though admittedly not impeccable, is represented as the prophet of the *Risorgimento,* and though endowed with the gift of a magnetic personality, is shown to have made less practical contribution to the achievement of Italian unity than, for example, Balbo, D'Azeglio, and Gioberti. Mazzini's great work for Italy was, to quote Sir John, "as a teacher of ethics rather than of politics." Cavour is credited with the possession of two qualities essential to a statesman—caution and rashness; Garibaldi with the possession of two qualities essential to the qualities of a true soldier—faith and audacity. Indeed, the idealism of Mazzini and the heroic courage of Garibaldi were quite as essential to the making of a united Italy as was the diplomacy of Cavour. Victor Emanuel's great service in this work was derived from the lucidity of his vision, his common sense, his will power, his moral and physical courage, and, most of all, his sincere belief in the mission of the house of Savoy and the future of his country.

The political, social, and economic unrest which followed Italy's entrance to Rome in 1870, and which continued uninterruptedly to the end of the World War, is skilfully analyzed. Fascism owes its birth to the general discontent with the social and economic conditions, disillusionment at the political results of unification, high taxation, disgust with parliamentary inefficiency and widespread corruption, the industrial and agrarian disturbances, the growth of socialism, and, most of all, Italy's failure to achieve a prominent position in colonial expansion and international politics. "Italy," declares Sir John, "called aloud for a Saviour of Society," and Mussolini responded. "With prophetic vision," to quote from the author, "quickened by many hardships endured for Italy, he saw arising on the ruins of war a new Italy purified as by fire, and purged of the corruption which, ever since 1870, had tainted the political life of his country and clogged the wheels of administrative and economic progress. His was the idealism of Mazzini, combined with the practical statesmanship of Cavour, and the heroic temper of Garibaldi." After

analyzing the Fascist program and the Fascist doctrine of state, the author deals with the reforms which Mussolini has been carrying out for nearly a decade "with unremitting energy, with rare self-devotion, and, so far as contemporaries can measure results, with amazing success," and concludes the book with a discussion of the Lateran Treaty—the one outstanding achievement of Mussolini which would by itself entitle the Italian Premier to a preëminent position in history.

HOWARD R. MARRARO.

Columbia University.

Italian Foreign Policy: 1918-1932. By MURIEL CURREY. (London: Nicholson and Watson, Ltd. 1932. Pp. 330.)

Students interested in foreign relations, and in contemporary history generally, will welcome Miss Currey's contribution to the history of Italian foreign policy from 1918 to 1932. After devoting a chapter to Italy's part in the World War and two chapters to the intricate questions of the Peace Conference, the book takes up in strictly chronological order the many international problems which Italy has had to face since the advent of Fascism. The author very wisely allows Mussolini to explain and review his own policy, and in doing so she gives a verbatim translation of the most important speeches on foreign policy which the Italian *Duce* delivered during his seven years as foreign minister. With the permission of the Italian Foreign Office, Miss Currey has published for the first time the full text of the official memorandum setting forth the Italian claims at the Peace Conference.

While written with much fairness, the book is, as the author herself points out, superficial in its treatment of the subject, but this is due to the fact that the archives of the several foreign offices for this period are still unavailable. For this reason, one might suppose, the author avoids a discussion or analysis of the various problems at issue. The continuity of the narrative suffers a great deal as a result of the chronological method employed. There is no effort to separate important international questions from relatively insignificant events.

The chief merit of this study is the strikingly different picture it draws of Mussolini's foreign policy when compared to that painted by men who, as Luigi Villari points out in the preface, through ignorance and willful misrepresentation, have created an atmosphere unfriendly to Italy. It is not denied that Italy's foreign policy—like that of all other nations—has been prosecuted on the basis of what her government officials have considered to be the country's best interests. But it is none the less true that Mussolini in his speeches has repeatedly, and with ever-increasing firmness, sought to make certain and safeguard the peace of Europe.

His speeches have not been idle talks, for throughout this study the reader finds numerous facts in support of his position. Not only was Italy one of the guarantors of the Locarno Treaty, but she has actually signed a greater number of international treaties than any other power since the war. These include the Kellogg Pact, the Optional Clause, the General Act for the Pacific Settlement of International Disputes, and sixteen bilateral treaties of arbitration and conciliation. In addition, Mussolini has faithfully supported the policy for a reduction of armaments, and has collaborated with the League of Nations in its efforts to facilitate the economic recovery of Europe. Italy, finally, was the first nation to accept unconditionally President Hoover's proposal for a moratorium.

It would seem, indeed—though this point is not dwelt on by Miss Currey—that, despite the aid which the Italians undoubtedly gave to the Allies during the World War—aid which meant not only great sacrifices in the hour of need, and even greater sacrifices in the hour of triumph, the Allies have since regarded her vital interests as things unconnected with their own. This is unfortunate. But it may be well to remember that if in the future Italy should succeed in adjusting her foreign policy to those interests which are far removed from those of her former Allies, they, and they alone, can be held responsible for her actions.

HOWARD R. MARRARO.

Columbia University.

The China Year Book, 1931-32. EDITED BY H. G. W. WOODHEAD. (Shanghai: The North China Daily News and Herald, Ltd. 1932. Pp. xvi, 831.)

Since 1912, the China Year Book has occupied first place among reference works on contemporary China. The present volume is the fourteenth in the series, and its editor, a British journalist, has put into its preparation the same arduous effort that has marked his work on the volumes previously published. The *China Year Book*, like other year books, is to a considerable extent a compilation of statistics. As such, it disproves the familiar saying that "in China there are no facts." Chapters which combine historical, descriptive, and statistical data are devoted to agriculture, industry, fisheries, trade, communications, and other topics of general interest. The "Who's Who" section is useful in identifying recent *arrivés*.

But what distinguishes Mr. Woodhead's volumes is, on the one hand, the contributions of authorities in various fields, e.g., public health, climate, geology, labor, flood control, finance, religion, etc., and, on the other, the attention given to political, constitutional, and diplomatic developments. One is pleased to find summaries of the Feetham report on Shanghai and the Kemmerer report on currency and banking; also a useful account of the Hulutao harbor project. The history of the Kuomintang and its strug-

gles to maintain control of the central government is brought down to February, 1932. The two 1931 revisions of the organic law are printed in English; also the provisional constitution of Manchukuo, the new banking laws, and certain hitherto unavailable diplomatic documents. A full documentary record of the Japanese intervention of 1931-32 and its international repercussions is included.

In congratulating Mr. Woodhead and his readers upon this invaluable work of reference, which is attractively bound and well indexed, the reviewer ventures to express the hope that subsequent issues may be printed in somewhat larger and less crowded letter-press.

HAROLD S. QUIGLEY.

University of Minnesota.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

Confessions of the Power Trust (E. P. Dutton and Co., pp. xx, 670) is a voluminous summary by Carl D. Thompson of testimony given in the hearings of the Federal Trade Commission on utility corporations in pursuance of a resolution of the United States Senate approved February 15, 1928. The full published report of the hearings numbered, up to last August, forty-four volumes, with the taking of testimony by no means completed. As secretary of the Public Ownership League of America, the compiler of the present summary naturally has a very definite point of view with regard to the whole matter, but one will not find difficulty in agreeing with him that the hearings constitute "one of the most important"—if also one of the most formidable—"public documents ever published by a commission of the American government." Every effort has been made, we are told, to review the hearings in an impartial manner, and without bias, citing testimony, so far as possible, in the language of the witnesses themselves. Twenty chapters, however, on "propaganda methods" and fourteen on "the war on public ownership" lead one to wonder whether a definite slant has not been imparted to the work of selection, resulting in a picture rather different from that which would have resulted from a similar combing of the evidence by a person or group of persons approaching it with no preconceptions. Allowing for the high importance which the power question undoubtedly possesses, one may doubt also whether the compiler's view can be sustained that the problem is one of "greater magnitude and deeper significance . . . than has ever before confronted this people." Mr. Thompson's volume will be useful as a guide to a labyrinth of significant materials, but will require to be checked up by any one desiring to study the subject dispassionately and objectively.

In bookkeeper's slang, the expense account is known as the swindle sheet. *Washington Swindle Sheet* (Albert and Charles Boni, pp. 299), by William P. Helm, purports to tell the tale of "the world's greatest swindle sheet"—the expense account of the Senate of the United States. Taking the year 1931 as a sample, the author, who according to his own account presents the singular spectacle of a Washington correspondent of seven years' standing who "has not a speaking acquaintance with a single member of Congress," mercilessly lays bare the sums spent, at the taxpayer's expense, by and for United States senators, singly and collectively, and tops off with an exhibit of mounting White House expenditures under the Hoover régime, with a final fling at the wastefulness and futility of "government by commission." Extravagant mileage allowances, "Roman" baths in the Capitol, free mineral waters of seven selected brands, franked campaign documents, clerk hire for relatives who sometimes do not even live in Washington, junkets to all manner of interesting and comfortable places—these and many other things, not omitting heavy outlays for public funerals, play startling parts in the record. Nothing is revealed that could not be ascertained by any one at any time who cared to peruse the annual report of the secretary of the Senate. Mr. Helm's presentation, however, has a spectacular quality that a government document never possesses, and one may be permitted to hope that it will contribute to some amelioration of a state of things which, if not actually scandalous, seems at least indefensible in a period of penny-pinching in the government services. After so much is said, it must nevertheless be added that the author's case is materially weakened by his almost complete failure to distinguish between legitimate and questionable expenditures.

High Low Washington (J. B. Lippincott and Co., pp. 268), by two anonymous writers, "of unique experience both in Europe and America" —so the publishers assure us—is a chatty, good tempered, and more than ordinarily diverting cross-section view of men and manners in the national capital. The authors are not looking for scandal and their pens have not been dipped in gall. Rather, they write as amused, but tolerant, observers on the side-lines of the great national game of politics, as spectators of the daily flow of business and pleasure in "the semi-negroid city whose principal industry and sole *raison d'être* is the government of the second largest aggregation of the Caucasian race in the world." The serious student of government will find nothing very profound in the book, yet a good many turns and flashes that will be grist to his mill, especially if he is concerned with the challenging problem of the relation of personality and politics.

In *A Practical Program for America* (Harcourt, Brace, and Co., pp. x, 133), edited by Henry Hazlitt, are brought together ten short papers

originally appearing in the *Nation* and presenting courses of policy and action which each of the ten authors recommends for America in the next four years in the particular field of which he writes. Specially notable are the discussions of the tariff by Mr. Hazlitt, taxation by Professor E. R. A. Seligman, business and anti-trust laws by Professor Walton H. Hamilton, and power by Mr. Morris Llewellyn Cooke. There is no attempt to articulate the various proposals made, and numerous important fields of regulative action, e.g., labor problems, are left untouched. Individually, however, most of the essays have permanent value.

Making a President; A Footnote to the Saga of Democracy (Alfred A. Knopf, pp. xvi, 186) consists of a racy article by H. L. Mencken published in the *American Mercury* last June, together with some twenty shorter—in some instances no less racy—articles depatched by Mr. Mencken to the Baltimore *Evening Sun* from the scene of the Republican and Democratic national conventions in Chicago in June and July. A preface gives interesting sidelights on how reporting is carried on at national conventions, and the reprinted despatches, while marred by an air of super-sophistication and by plenty of downright prejudice—should certainly not be ignored by any one interested in the amazing phenomena attending American presidential elections.

Mr. George Rothwell Brown's *The Speaker of the House; The Romantic Story of John N. Garner* (Brewer, Warren, and Putnam, pp. 162), is a gossipy campaign biography of the familiar type, except with somewhat more than the usual weakness for sentimentalism. There is but a single brief chapter on Mr. Garner's speakership, and it consists almost entirely of a fervidly laudatory account of the speech of March 29, 1932, on the budgetary situation following defeat of the manufacturers' sales tax by the House of Representatives. Of the Speaker's own somewhat dubious fiscal proposals, no word is said; nor is there any mention of the circumstances under which he became the Democratic vice-presidential nominee.

The University of Oklahoma Press has published a small booklet by Harry N. Howard on *Military Government in the Panama Canal Zone* (pp. 62) which discusses the treaty basis for American jurisdiction in Panama, the organization of a government for the Canal Zone, and the effect of the World War.

FOREIGN AND COMPARATIVE GOVERNMENT

Arthur Herman's *Metternich* (The Century Co., pp. 370) is the first real biography in English of the famous European statesman. The author's interpretation should be of special interest to students of European di-

plomacy and of international government, although many will perhaps not agree with him. He concludes that Metternich's "greatest claim to fame" lies in his rôle "as pacificator, as a technician of universal, supranational peace," and prophesies that it is in this rôle "that his name may some day be resurrected, to be placed with the names of those who have deserved greatly of mankind. The political thought of tomorrow thinks not in terms of nationalism, or even of internationalism, but of cosmopolitanism, of federalism. This aim is world peace, to be attained first by the federation of a few of the Great Powers, perhaps another Pentarchy, as in the time of Metternich. These Powers, by the might of their combined moral, military, and financial resources, are to *impose* peace upon the rest of the world in most realistic fashion. Among themselves, they are to take common counsel and have a common council. The movements that they make toward the enforcement of peace upon the world will be common rather than joint. They will sacrifice the concept of nationalism among themselves, and in consequence disdain it among the lesser states. "Compare this with Metternich's pentarchic balance. The ideal was European peace. The Five Powers were to consult periodically. None of them was to be preponderant; they should be moral and, if possible, physical equals. Nationalism, in the sense in which we now know it, had little meaning. Eighteenth-century Europe contained Powers rather than nations. . . . If five Powers would not come, he endeavoured to bring four together; if that was not possible, he had to be content with three. Always, however, they were Great Powers: . . . If a World Federation ever comes to be among the human possibilia, it will most likely be based upon cosmopolitanism rather than upon internationalism, and perforce follow with a mature and practiced ease the cruder technique of Metternich. His name should in that day be profoundly honored. He will have established a true claim to perpetual and grateful remembrance."

Professor J. Fred Rippy's *Historical Evolution of Hispanic America* (Crofts, pp. 580) is the fourth recent effort to give the English-reading public a general survey of the rise and present condition of the Latin American states. The subject is so broad that no author, it may be supposed, is fully satisfied with what he can crowd into one volume. W. S. Robertson, in the enlarged edition of his *History of the Latin American Nations,* has offered a compendium of facts accompanied by little interpretation of the course of the development of which they form a part. James and Martin, in *The Republics of Latin America,* essayed to sketch the history of government and economic conditions of all the republics in less than five hundred pages. Miss M. W. Williams, in her *People and Politics of Latin America,* has sought to give an insight into the rise of the Latin

American peoples, their life in current years, and their problems. This volume has recommended itself to many as the best comprehensive survey yet available. Mr. Rippy's book seeks to give a general survey, with less emphasis on developments in individual units than is found in the preceding volumes. Freedom of interpretation of the general course of advance is secured by putting the discussion under periods rather than under countries. The argument proceeds with a better swing than is possible when it is departmentalized. On the other hand, there is occasionally loss of definiteness as to the course of national development in the various units. The last forty per cent of the volume traces the international relations of Latin American states and the rivalries of other states concerning them. These chapters, as the author points out, are in large part reprints, with slight modification, of material already available in his *Latin America in World Politics*. Dr. Rippy's volume shares one shortcoming with other surveys of the same field. The historical background of every country is essential to an estimate of its current life and prospects. In the southern republics, perhaps to greater degree than in any other part of the world, more history has been made in the last fifty years than ever before. The space given this dynamic period does not allow deserved emphasis on the forces which have made present-day Latin America.—C. L. JONES.

Robert Bernays, a member of the British House of Commons, has written a book about Gandhi and India entitled *The Naked Faquir* (Henry Holt and Co., pp. xvi, 335), which is in the form of a diary setting forth the author's "reaction to the Indian scene and the chief characters on its stage." The volume deals largely with the controversy between Lord Irwin and Gandhi, the Round Table meetings, and the Indian Congress, interspersed with numerous sketches of the various leading figures, descriptions of places and happenings, and keen observations regarding the significance of political events. Despite the title, the book is on the whole sympathetic in dealing with its central figure, although the author doubts whether Gandhi has the qualities "of constructive statesmanship." He says, however, that Gandhi has the clearest mind of anyone he ever met. "But it is a subtle mind, and the British public, who rarely understand more than two points of view in any question, will be quite unable to follow the infinite shades and nuances, qualifications and reservations, in Gandhi's simplest utterances." Writing in January, 1932, the author expressed the opinion that there could be "no permanent settlement of Indian problems which does not receive the support of the Congress, whose plenipotentiary Gandhi was. The problem of constitution-building is like that of a jig-saw puzzle. . . . But by far the most important piece is Con-

gress, which is the voice of Hindu political India.'' The book is written in a vigorous and interesting style.

A volume entitled *The Finance of Government*, by the Rt. Hon. John W. Hills, first published in 1925, has been brought out in revised and enlarged form under the title of *British Government Finance* (Philip Allan, pp. 218), and with Mr. E. A. Fellowes as a collaborator. The book contains easily the most convenient, informing, and trustworthy exposition of British public finance now in print. Part I, in eight chapters, deals with revenue and administration; Part II, in a single chapter, with the currency system; and Part III, in four chapters, with the national debt. The treatment is essentially factual, with but slight attention to problems of fiscal policy, or to procedural questions such as that of supplanting nominal by actual control by the House of Commons over appropriations. This is not remarked, however, by way of criticism, for the book purports to be nothing more than a description of the existing mechanism of financial administration and of the way in which it works. The task thus chosen has been performed exceptionally well.

Professor Nicolæ Iorga, former Roumanian prime minister, and rector of the Bucharest University, delivered a series of addresses in the United States during 1929, which are now embodied in a well-edited and attractively bound volume entitled *My American Lectures* (State Printing Office, Bucharest, pp. 192). Such lectures as ''Catholic Organizations and Propaganda in South-Eastern Europe,'' ''Present-day Problems of South-Eastern Europe,'' ''Democracy in South-Eastern Europe,'' and ''French Influence in South-Eastern Europe'' are of great value, representing, as they do, the viewpoint of the outstanding historian of Roumania and the Balkans. They range from contemporary problems to disquisitions on antiquity, and each reveals Iorga as a profound historical scholar whose interest and knowledge ranges over the whole field of human activity. The volume should be read by those interested in the problems of the Balkans.—J. S. Roucek.

Madame Valentine Thomson, the daughter of a prominent member of the French Parliament, presents as the central theme of her popular and readable book, *Young Europe* (Doubleday, Doran and Co., pp. viii, 342), the idea that a new Europe is in the making as the result of economic, political, and social problems following the War which have emphasized the necessity of unified action among the states of Europe. ''The discovery that internal politics have a limit, the common interests of nations; that the economic status of a people is not in proportion to the amount of cash it holds in its treasuries; that the markets are as important to indus-

try as machinery and factories for production; these facts and their related problems have been making for this strange and still bewildered new Europe." The book includes, among other things, accounts of interviews with Briand, Laval, Brüning, Beneš, and other statesmen who have played an active part in "lifting the face" of Europe. So rapidly do events transpire, however, that some of the leaders about whom the author writes have already disappeared from the stage. Madame Thomson's estimate of Hitler agrees somewhat with that of Lengyel when she says: "Hitler is no more than the noisy figurehead of all the armies of discontent. He has nothing to lose and no real help to offer."

Liberty: The Story of Cuba (pp. 447) was written by Mr. Horatio Rubens, who was the legal adviser of the Cuban revolutionary junta in New York. He later went with the American forces to Cuba and was active in various capacities during the period of American military occupation. His volume is an anecdotal memoir not untinged by a crusader's enthusiasms and antipathies. It gives interesting material on the collection of funds for the revolution, how filibustering expeditions were managed, the character of the revolutionary and Spanish campaigns, and the personalities of the Cuban and American leaders.

INTERNATIONAL LAW AND RELATIONS

American Foreign Policy in Mexican Relations (The Macmillan Co., pp. 664), by James Morton Callahan, is a scholarly, well documented exposition of a field in American foreign policy of primary interest to the American people. The volume is based on a number of monographic studies by other authors, thorough research in the manuscript archives of the Department of State for the period previous to 1907, and for the subsequent years on public documents, especially the *Foreign Relations of the United States* and newspaper reports. Mexican materials, except as they form a part of the diplomatic correspondence, are not cited. There is little attempt at general interpretation; in fact, at times the diplomatic exchanges are followed with such detail that the discussion suggests a calendar. Though this is a limitation on the interest of the book for the general reader, the student will not complain because of its completeness. The result is the first "general historical view of American Mexican policy." Dr. Callahan's review merits wide reading by Americans both north and south of the Rio Grande. It gives the long-range point of view which has been so conspicuously absent from most of the popular discussions of Mexican-American relations. But both to Mexicans and to citizens of the United States the facts presented will bring reasons to put bounds upon claims as to the national record. The impartial exposition of the relations be-

tween the two countries since 1900 especially deserves the study of that large number of our fellow citizens who have been disposed to think the position of the United States in the controversies of the period to be uniformly indefensible.—C. L. JONES.

Years of Tumult: The World Since 1918 (W. W. Norton and Co., pp. ix, 345), by James H. Powers, foreign editor of the *Boston Globe*, is written "with the hope that some of the immense confusion created in the public mind by the pell mell of events during 1931 may be dispersed by a plain narrative, sketching the major developments of the world drama since the signing of the Treaty of Versailles." The author, who approached his task well prepared by a scholarly understanding of history and a background of "thirteen years given to day-by-day study and analysis of world affairs," has accomplished his purpose in admirable fashion. The book does not merely set forth events; the author explains the trends in world affairs that have produced the complicated problems of today and constructs for the reader the chain of cause and effect. Mr. Powers is of the opinion that the Treaty of Versailles, by ignoring or dismissing "basic changes in world condition and attitude, especially in social thought," is the "villain in the piece." The close of the war found the world, in his opinion, divided between three belts of policy. Russia of the Communist Revolution, with a distinct social attitude and goal, was entrenched in one. "In the second lay a Europe in which Social Democracy found itself embattled against right and left reaction, while it strove to work its way with a minimum of violence out of the dilemma created by both toward an order of society which would express the social revolution and democratic ideals. In the third belt stood the United States . . . suspicious of a social movement in Europe which it did not understand . . . and violently opposed to the whole conception of life embodied in the handiwork of the Russian Communists." At the same time, Japan, China, India, Egypt, Turkey, and Africa were being moved by new forces. A contest "which grew from fundamental differences of view as to the social goal of man divided peoples, governments, and their international policies." This division and a description of the three contending ideas of life—Communism, social democracy in Europe, and democratic individualism in the United States—are the central theme which gives unity to Mr. Powers' narrative. The book is well written and readable from beginning to end. It makes much clearer for the lay reader the confused world politics of today.

Compulsory Arbitration of International Disputes, by Helen May Cory (Columbia University Press, pp. 239), is intended to be a study of "the system of obligations whereby states have undertaken, in advance, to have

recourse to arbitration for the settlement of their disputes." Using the criterion of "the manner in which the decisions of states to have recourse to arbitration are taken," the author refers to this system as "compulsory" arbitration to differentiate it from "voluntary" methods. In examining the instruments by which states have bound themselves, in advance of actual disputes, to employ arbitral methods of solution, a chronological arrangement is generally followed. Certain chapters are based, however, on a distinction between general arbitration agreements and compromissory clauses providing for arbitration of differences concerning the subject-matter of the particular treaty in which the clause appears, Two chapters are confined to the "practice" of compulsory arbitration. The study is useful for its convenient treaty lists, but it fails to explore, either analytically or critically, the possibilities of an important subject. The Geneva Protocol and the Locarno treaties are treated in a few sentences. Topics which are fundamental in any consideration of obligatory arbitration, such as the shortcomings of international law, procedural difficulties, and enforcement of awards, are barely mentioned. While the book may be found helpful as a perfunctory survey of the subject, it does not fill the need of a thorough examination of the existing network of treaties by which states are legally bound, in varying degrees of completeness, to submit disputes to arbitral methods before having recourse to armed force.—A. E. HINDMARSH.

Japan and America, by Henry W. Taft (The Macmillan Co., pp. 359), will prove disappointing even to such readers as have learned not to take publishers' "blurbs" too seriously. The first hundred pages or so record the author's three weeks' visit to Japan in the summer of 1920, when, as a member of an unofficial "good will mission" of American business men, he was royally entertained by his Japanese hosts. Another hundred pages deal with some of the outstanding causes of friction between the two countries; here, in the opinion of the reviewer, the immigration question has been given somewhat exaggerated importance. Pages 202-309, apparently included at the request of the publishers, contain "an up-to-the-minute discussion of the Manchurian controversy and the Shanghai incident." It is difficult to believe that Mr. Taft would himself regard his visit to Japan as adequate qualification for writing on this last topic. But then it is almost equally difficult to understand why any part of the book should have been written. A forty-page appendix contains some useful material.—G. NYE STEIGER.

Published by the faculty of political science of the University of Pavia, *Gli Stati Uniti dall' Isolamento all' Intervento vella Guerra Mondiale* (pp. 152), by Carlo Marchiori, deals, in its two parts, with the American policy

of isolation and the Monroe Doctrine to 1914 and with America's participation in the World War. The volume will have value for European readers, but Americans will find in it little or nothing that is new. Names of American authorities cited in the foot-notes and brief bibliographical lists are misspelled inexcusably.

POLITICAL THEORY AND MISCELLANEOUS

The publication of the sixth and seventh volumes of the *Encyclopaedia of the Social Sciences* (pp. xxv, 713; xxv, 722), edited by Edwin R. A. Seligman, Alvin Johnson and others, makes increasingly apparent the usefulness of the work for students of government. To mention only a few of the leading articles, the subject of "Fascism" is treated by Edwin von Beckerath, of the University of Cologne; "Federalism" is dealt with by Max H. Boehm; "The French Revolution" by Albert Mathiez; "The General Property Tax" by Harley L. Lutz; "Government Ownership" by Stacy May; "Grants in Aid" by Herman Finer; "Guild Socialism" by G. D. H. Cole; "Individualism" by A. D. Lindsay. Thirty-two pages of the seventh volume are devoted to "History and Historiography." In this section, Henri Berr and Lucien Febvre discuss first the concept of history and historical analysis, methodological progress, the materials of history, the problem of objectivity, and the concept of universal history. Their introductory analysis is followed by articles by various authorities on the historiography of antiquity, medieval Europe, modern Europe, Islam, China and Japan, and the United States. Allan Nevins discusses the historiography of the United States. Of chief interest to students of political science is the section of almost one hundred pages given over to the subject of "Government." W. J. Shepard has contributed an article on the general history and theory of government, and Arthur W. Macmahon outlines the main features and trends of the government of the United States. Professor Shepard concludes that "if the transition to a new political order is to be accomplished by processes of political evolution rather than social revolution, the present democratic state must undergo such changes and adaptations as are necessary to meet the changing situation and to correct the defects which are becoming increasingly evident." He then proceeds to list a number of major changes which he thinks are most important: a recognition of the fact that "the state is only one of many human societies which exist for the accomplishment of limited ends and purposes;" inclusion in the framework of government of some means of representing innumerable groups which are organized for economic, social, religious, and other purposes; the interpretation of the purposes of government in terms of service rather than protection; larger

provision for use of the expert in government; and a more pragmatic approach to the problems of government. Harold J. Laski writes on Great Britain, Robert A. Mackay on Canada, Andrew E. Malone on the Irish Free State, and W. Y. Elliott on the British Commonwealth of Nations; while the other dominions are dealt with by various authorities. France and Belgium are treated by Maurice Claudel, Germany by A. Mendelssohn-Bartholdy, Switzerland by William E. Rappard, the Baltic states by Malbone W. Graham, Turkey by Albert H. Lybyer, Latin America by Herman G. James, China by A. N. Holcombe, and the other countries by different writers. The contributors to this section are to be congratulated on the skill which they have shown in condensing such a mass of material within the limits of a hundred pages. Naturally, all that can be done is to discuss essential features, underlying principles, and important tendencies. In this section, as throughout the work, a most valuable feature is the detailed bibliography of the subjects dealt with. The only criticism which the writer has heard in regard to the *Encyclopaedia* is the question raised by some as to the value of many of the short biographical sketches.

Friedrich List. Grundlinien einer politischen Ökonomie und andere Beiträge der Americanischen Zeit 1825-1832 (Berlin: Reimar Hobbing, pp. xiv, 530), edited by William Notz, is the second volume of the new edition of Friedrich List's works undertaken by the Friedrich List Gesellschaft. In line with the general revival of interest in List, the American reader, especially, will find in this volume many new points and stimuli in the fields of American economic history as well as of the history of economic thought. The volume contains an immensely industrious introductory investigation of List's activity in the United States, undertaken by Professor Notz, who is the pioneer and authority on this problem. List's own diary notes are annexed to the introduction. This part of the volume is an unusual contribution to the picture of the economic situation of the country at that time. The tariff problem, the formation of the "American system," the problem of the "industrial or agricultural state," are the background and the topics of List's studies. Unfortunately Professor Notz devotes less attention to the investigation of List's relations to contemporary economic thought, his influence in this country, and the American influence on him. However, the publication of the volume makes such a task now possible. The main part of the book is devoted to the famous *Outlines of American Political Economy* (1827-30) and various articles and speeches on tariffs, articles in the *Readinger Adler* (1826-30), fragments, letters, and reports. List's reports in his capacity of American consul in Europe are reproduced in an appendix.—J. F. Normano.

A series of booklets prepared under the direction of the Institute of Law of the Johns Hopkins University in connection with its study of the administration of justice in New York, Maryland, and Ohio has been published by the Johns Hopkins Press: (1) *The Kings Bench Masters and English Interlocutory Practice,* by E. S. Greenbaum (pp. xxiv, 106), deals with a method of relieving the courts which has received considerable attention; (2) *Study of Civil Justice in New York* (pp. 39) outlines the program which the Institute proposes to follow in its investigation of the administration of civil justice in New York and states the important problems with which it will deal; (3) *Expenditures of Public Funds in the Administration of Civil Justice in New York City,* by Stuart Chase and Ida Claus (pp. 16); (4) *A Study of Day Calendars,* by H. Oliphant and T. S. Hope, Jr. (pp. 38); (4) and two of the studies of specific problems, *Comparative Judicial Criminal Statistics: Ohio and Maryland,* by L. C. Marshall (pp. viii, 83,) and *Uniform Classifications for Judicial Criminal Statistics,* by W. L. Hotchkiss and C. E. Gehlke (pp. vii, 133). As a part of the same series there appears a thesis on *The Justice of the Peace Courts of Hamilton County, Ohio* (pp. 118), written by Paul F. Douglass, Taft fellow in political science at the University of Cincinnati. This study is of interest not only because of the light it throws on the working of a most important part of our judicial machinery, but also because of the author's conclusion in which he favors as the most practicable solution of a difficult problem the retention of the justice of the peace courts in Hamilton county, completely reorganized, however, to make them function more satisfactorily. Although he recommends the abolition of the fee-system of compensation, the author is not convinced that under the plan of reorganization proposed it is necessary to require the local justices to be lawyers. He believes that there is some advantage in providing for "the active participation of citizens in the work of governing," and that the increasing centralization of government is not all to the good. The editors of the series are L. C. Marshall and H. E. Yntema.

Professor Carleton J. H. Hayes has completed the first volume of *A Political and Cultural History of Modern Europe* (The Macmillan Co., pp. xix, 863), which covers the period from 1500 to 1830, described as "three centuries of predominantly agricultural society." The present work is based in part on the author's earlier *Political and Social History of Modern Europe,* which has been so useful to students of government because of the attention paid to political development. The principal change, so far as subject-matter is concerned, is to be found in the greater emphasis on what Europe "has thought and achieved in science and philosophy, in literature and art." The new work is enriched by about sixty full-page

illustrations by contemporary artists, a dozen or more maps from contemporary atlases, and the reproduction of interesting initial letters and chapter tail-pieces. The reader will await with pleasure the appearance of the second volume, which will deal with the industrial society of the last century.

Under the auspices of the International Industrial Relations Association, a "world social economic congress" was held at Amsterdam in August, 1931, with Miss Mary van Kleeck, of the Russell Sage Foundation, as chairman of the program committee. The proceedings, which are by no means without interest for political scientists, are now available in a portly volume entitled *World Social Economic Planning* and a supplementary volume designated as an *Addendum* (International Industrial Relations Institute, The Hague, pp. lxiii, 1-585, 586-935). Miss van Kleeck contributes a sixty-five page analysis and review of the congress, and papers or discussions are included by Dr. H. S. Person, of the Taylor Society, New York City; Dr. Lewis L. Lorwin, of the Brookings Institution, Washington, D.C.; Professor Ernest M. Patterson, of the University of Pennsylvania; and Professor J. P. Chamberlain, of Columbia University. As might be expected, much attention is given to various phases of the Russian experiment.

In *The March of Democracy* (Charles Scribner's Sons, pp. xvi, 428), Mr. James Truslow Adams proposes to present a history of the United States which will hold the balance even between the factual and the interpretative, between the old "drum and trumpet" type and the newer type which concerns itself merely with the "voices and motives of the market place" or eventuates in only "a picturesque account of manners and arts and thought." Volume I, bearing the sub-title "The Rise of the Union" and reaching the year 1860, promises successful performance of the task, although final judgment must be suspended until the second and concluding volume makes its appearance during the spring. The narrative has vividness and flows without interruption from footnotes or other apparatus of scholarship; and interest is heightened by a wealth of halftones, cuts, and maps, including some never before published.

In *Herbert Hoover and American Individualism; A Modern Interpretation of a National Ideal* (The Macmillan Co., pp. x, 256), President Walter F. Dexter, of Whittier College, has contributed a study of Mr. Hoover as "the leading modern American exponent of the philosophy of individualism." Following an interesting analysis of the social, intellectual, and religious environment in which the President's boyhood days were spent, the author in successive chapters discusses American individualism, chiefly

as illustrated by Mr. Hoover's beliefs and attitudes, in relation to personal liberty, the functions of government, economic progress, and the problem of war. Large use, naturally, is made of the little book, *American Individualism*, written by Mr. Hoover in 1923. The main value of the volume lies in the discerning interpretation which it contains of the relation between individualism as a way of life and the social, economic, and cultural conditions existing in the newer parts of the country in the past fifty or sixty years.

The Development of American Commerce (D. Appleton and Co., pp. xx, 390), by John H. Frederick, professor of commerce and transportation at the University of Pennsylvania, is frankly a textbook. Following a strictly chronological order, the author writes chiefly of the volume and forms of foreign and domestic trade, the relations of commerce and industry, the course of trade as affected by transportation developments, the bearings of tariffs, the merchant marine, and the relation of American to world trade. All topics are treated briefly, and the student of government will find the volume useful rather for general background than for satisfying discussions of the sources and effects of legislative or administrative policy.

Christopher Dawson, in *The Making of Europe: An Introduction to the History of European Unity* (The Macmillan Co., pp. xxiv, 317), treats the history of the early Middle Ages in such a way as to emphasize the common culture of the peoples of Europe. In his opinion, nationalism with its evils has been so over-emphasized in recent times that it is well to look back to that distant age when there existed at least a unity of culture and traditions. "We must rewrite our history," he states, "from the European point of view and take as much trouble to understand the unity of our common civilization as we have given hitherto to the study of our national individuality."

Two studies of the city and county government of San Diego, California, have been published during the present year. *San Diego—Politically Speaking* (pp. 250), by Captain George F. Mott, Jr., professor of political science in the San Diego Army and Navy Academy, is a study of the development of municipal government, with two chapters on the influence of newspapers on elections and government in San Diego. The California Taxpayers' Association has published a substantial survey of the government of San Diego county, with recommendations for changes which might be incorporated in a new home-rule charter.

Sales Taxes: General, Selective, and Retail (pp. ix, 79) has been published by the National Industrial Conference Board. The book analyzes

the results of various forms of sales taxes, with a chapter on the shifting and incidence of the general sales tax. The summary recapitulates the arguments for and objections to a general sales tax, and notes the present tendencies toward selective sales taxes, but considers it more probable that the future development of income taxes in the states will precede any widespread use of sales taxes.

A new edition of John B. Andrews' booklet on *Labor Problems and Labor Legislation* (pp. 135), completely revised down to 1932, has been issued by the American Association for Labor Legislation. The subjects dealt with are employment, wages, hours of labor, safety, health, social insurance, and enforcement of laws. The problems of unemployment are especially emphasized. The book is a model of condensation and provides a simple but excellent introduction to the subject.

In these days when the whole question of tariffs is to the fore, much interest attaches to *William James Ashley; A Life* (P. S. King and Son, pp.vi, 176), by Anne Ashley, a daughter of the eminent and influential Harvard and Birmingham professor. One chapter is devoted especially to Ashley's writings on the tariff (particularly *The Tariff Problem,* published in 1903) and his relations with political parties.

Students of early government in the area now known as the Middle West will find three or four interesting chapters in Carl S. Driver's *John Sevier; Pioneer of the Old Southwest* (University of North Carolina Press, pp. ix, 240), particularly those dealing with Sevier as governor of the "state" of Franklin, as congressman, and as the first governor of Tennessee. The volume is well written and the fruit of painstaking research.

The Report of the British Committee on Ministers' Powers.[1] This document should be of great interest and value to American political scientists. The problems discussed are problems equally characteristic of our own system of government and of the present stage of development of political policy and administrative practice and procedure. Readers will indeed be struck by the fact that distinctions between the "parliamentary" or "cabinet" system of government and that labeled "congressional" or "presidential" are for the most part superficial.

There has developed in Britain, as in this country, considerable criticism of the widening discretion in legislation and adjudication extended to administrative agencies. As frequently happens in Great Britain, a single volume—that entitled *The New Despotism*, by Lord Hewart, the Lord Chief Justice—dramatized and focussed the issue. The attack there raised against the civil service and the administrative agencies and procedures generally was echoed in Mr. Ramsay Muir's *How Britain is Governed*. The professional outlook of the lawyer and judge, the interest of the reformer and the party advocate, coincided easily with a section of opinion that finds at all times a relief in attaching to so tangible and personal an object as an officer-holder the responsibility for the causes of our discontents with government.

It is possible that the existence of these sentiments and a more serious and critical concern for the drift of legislation and administration were responsible for the appointment, by the late Labor government, through the Lord Chancellor, of a committee "to consider the powers exercised by or under the direction of (or by persons or bodies appointed especially by) Ministers of the Crown by way of (a) delegated legislation and (b) judicial or quasi-judicial decision, and to report what safeguards are desirable or necessary to secure the constitutional principles of the sovereignty of Parliament and the supremacy of the Law." The committee consisted of fifteen persons (changes in personnel and number took place during the life of the committee) under the chairmanship first of Lord Donoughmore, and later, upon his resignation, of Sir Leslie Scott. Its membership included lawyers, civil servants, members of Parliament, and teachers of law and politics. Among the latter were Sir William Holdsworth and Professor Harold J. Laski.

The report is arranged in three main sections. The first is a brief in-

[1] *Committee on Ministers' Powers: Report Presented by the Lord High Chancellor to Parliament by Command of His Majesty.* Cmd. 4060 (1932).

A valuable discussion of this report by Professor W. A. Robson will be found in the *Political Quarterly*, July-Sept., 1932, and another by Mr. W. Ivor Jennings in *Public Administration*, Oct., 1932.

troduction containing certain general considerations; the second contains the discussion of the delegation of legislation; and the third an account of judicial or quasi-judical decisions of administrative authorities.

Early in the report (p. 7), the ground is cleared by the following statement: "We see nothing to justify any lowering of the country's high opinion of its civil service or any reflection on its sense of justice, or any ground for a belief that our constitutional machinery is developing in directions which are fundamentally wrong." To be sure, this sentence is followed by a genial and temperate acknowledgement to critics such as Lord Hewart: "None the less, the public should be grateful for outspoken criticism, even if exaggerated; and we think that the critics whose warnings—and it may be attacks—led up to our investigations performed a useful service."

The more valuable, and more extended, sections of the report are those on Delegated Legislation (pp. 8-70) and Judicial or Quasi-Judicial Decision (pp. 71-118). Each concludes with recommendations presented by the committee.

The section on delegated legislation opens with about thirty pages of history and analysis of the delegation of legislation by Parliament to administrative authorities or corporate societies, followed by ten pages containing a description of the safeguards against abuse of this power. Then follow, in turn, brief statements of the necessity for such delegation, the arguments advanced by critics of delegation, a few incidental comments on the interpretation of statutes, and finally twelve pages of conclusions and recommendations. A few general comments may be useful by way of indicating the possible value of this discussion to the American student.

The history of delegation here presented is used to make clear the coincidence of the two periods of great expansion of delegation to administrative authorities—the Tudor period and the present—with profound social changes which place new and difficult tasks upon government. This fact, usefully and clearly stated by Professor Frankfurter in the first chapter of his *The Public and Its Government,* is highly important and explodes the claims of those who assign as a cause of the movement the inordinate greed for power and authority of the civil servant.

It is also pointed out that the haphazard and planless nature of the growth of delegation has resulted in a great confusion in nomenclature (e.g., "regulation," "order," "rule," used interchangeably) and in procedure followed in legislating by administrative authorities. This generalization is illustrated by several pages of valuable analysis of various statutes in which legislative power is delegated, and of procedures followed and terms employed under these statutes.

In the third place, it is brought out clearly that the work of legislatures requires increasingly the supplementary activity of professional

administrators, and that the Parliamentary Counsel himself has supported the movement for delegation.

Finally, the inadequacy of existing safeguards for implementing parliamentary control over the exercise of the delegated legislative power is stressed. Here it is interesting to note the reappearance of criticism of the operation of the parliamentary system which should be particularly interesting to American political scientists. Unquestionably, the influence of such writers as Bagehot and Mill has led us to over-rate the effectiveness of parliamentary control; and readers of Professor Rogers' *The American Senate* will be interested to see among the recommendations of the present committee the suggestion that a parliamentary committee be given considerable powers of oversight concerning delegation of legislation. Whether the British cabinet can function effectively alongside a powerful committee of control drawn from the Parliament remains to be seen. On this, the experience of the French parliamentary commissions is of interest.

The recommendations suggested by the committee are based upon the view that the delegation of legislative power to administrative authorities is "inevitable" and "legitimate," although the development of this tendency has been "without system." Again returning to the abuse of civil servants, they declare that "we dispose, in passing, of the suggestion, unsupported as it is by the smallest shred of evidence, that the existence of such provisions in certain acts of Parliament is due directly or indirectly to any attempt or desire on the part of members of the permanent civil service to secure for themselves or their departments an arbitrary power" (p. 59). Concrete proposals include those for a more exact nomenclature and definition of terms (in statutes and otherwise) of reference in delegation of legislative power; use only in the most exceptional situations, and for the sole purpose of bringing an act into operation, of statutory grant to a minister of power to modify the terms of a statute; the retaining of the right and duty of an appeal to a court of law to "decide in any particular case whether the minister has acted within the limits of his power;" amendments to the Rules Publication Act to insure greater publicity concerning rules and regulations; extension of the practice of using consultative committees composed of representatives of interests affected in the framing of rules and regulations; changes in the Standing Orders of both houses to provide a small standing committee with the function of "(a) considering and reporting on every bill containing a proposal to confer law-making power on a minister; (b) considering and reporting on every regulation and rule made in the exercise of delegated legislative power, and laid before the House in pursuance of statutory requirement;" and a consideration of the possibility of requiring

the drafting of all delegated legislation in the office of the Parliamentary Counsel.

The proposals for the standing committee are of most importance and interest (pp. 67-69), for they contain not only the suggestion of scrutiny of bills containing grants of power to legislate (which is a function already performed by the American legislative committee), but also the suggestion that this committee review proposed regulations laid before the House prior to their taking effect. It is useful to compare this with the proposal made last year by Senator Cutting's committee of the Conference of Progressives that congressional supervision of the legislative powers delegated by Congress to executive agencies be given an institutional basis. What is most suggestive about the committee's recommendations to an American student is the frank recognition that, quite as much as in the presidential system, the system of parliamentary control does not control.

The third section of the report opens with a brief discussion of the expansion of the meaning of the term "rule of law" to include, with the doctrine of the supremacy of Parliament, the law evolved by and through judicial decision and interpretation. Here again the American reader will be struck, in the discussion of "Natural Justice" which follows, by the close parallel between the American and British situations despite the absence in Britain of a written constitution. Perhaps this is one reason why the third section is much more difficult and complicated.

The approach taken by the committee to the problem of administrative law is well summarized in the following sentence (p. 73): "Any encroachment on the jurisdiction of the courts, and any restriction on the subject's unimpeded access to them, are bound to jeopardize his rights to a much greater degree than would be the case in a country like the United States where they are protected by the express terms of a written constitution; for by any such encroachment the principal safeguard provided by the constitution for the maintenance of the subject's rights is impaired." Mr. Robson's view (placed before the committee) that it is precisely this possibility of appeal to the courts that denies a "safeguard" because of the cost involved, or because of the assignment of responsibility for injuries due to the action of a governmental department to the individual civil servant who may be unable to provide adequate remedy, was rejected by the committee (pp. 110-112). The orthodox view that only the traditional courts are capable of safeguarding the individual and his rights—a fundamental assumption which is being challenged increasingly—has prevailed with the committee in its treatment of judicial activities of administrative authorities. Nevertheless, as Mr. Robson points out in the article cited above, by its distinction between "judicial" and "quasi-judicial" func-

tions the committee makes it practically possible to continue the extension of administrative discretion in adjudication. "While we are of opinion that there should be an absolute and universal right of appeal to the High Court on any point of law from the judicial decision of a minister or ministerial tribunal, we are satisfied that there should as a rule be no appeal to any court of law on issues of fact" (p. 108).

Those who have followed the efforts of the Supreme Court of the United States to define "judicial," "executive," "legislative," and similar terms will find a certain melancholy pleasure in studying pages 73-82 and 92-97 in which there is an effort to give precision to the terms "judicial" and "quasi-judicial." As to the latter, the committee holds that the decision of the administrative authority is final, since he has complete freedom to make a decision with full discretion and on the grounds of policy. With the former, appeal to the court of law is essential, since the administrative authority is applying law to facts. Thus the "rule of law" is protected, while the advocate of administrative discretion can perhaps pull and poke his cases under the guise of "quasi-judicial" into the haven of finality of administrative decision. The Robson proposals were for a frank recognition of the development of administrative law by provision of special administrative tribunals, with the supporting argument that the liberties and rights of the subject would thus be better protected and extended because of the resulting decrease in legal costs and the more informed consideration of administrative action and policy which would be permitted. The articles by Professors Haines and Dimock in the October issue of this REVIEW are of interest in this connection.

In the third section, as in the second, there is much valuable descriptive and historical material concerning the evolution of judicial functions assigned to administrative authorities, differences in procedure, and types of organization adopted. Too brief for summary here, one can only advise the reader to turn to the discussions of the principles of "natural justice" in the matter of procedure (pp. 75-80), specialized "courts of law" such as the Railway Rates Tribunal and the Special Commissioners of Income Tax (pp. 83-87), and "ministerial tribunals" maintained by the administrative departments.

In its rejection of Mr. Robson's proposals for a system of administrative courts independent of ministers, the committee declared them "inconsistent with the sovereignty of Parliament and the supremacy of the law." The assertion of Lord Hewart that *droit administratif* is "completely opposed to the first principles of our constitution" was supported by the committee by an interpretation of the French system. The advantages of that system to the citizen in search of protection or damages from the wrongful acts of the state are referred to courteously, but with the

observation that "this . . . falls outside the scope of our reference." A guarded reference is made to the Crown Proceedings Bill, which "would fill the lacuna" in the rule of law created by the failure to provide adequate remedies against certain acts of the state.

The more concrete recommendations relating to judicial and quasi-judicial functions of administrative authorities include: the retaining of supervisory jurisdiction by the High Court of Justice over the exercise of such powers, with appeal to the Court on any questions of law; a simplification of the procedure relating to such appeals; the rejecting of appeals on issues of fact; the suggestion that quasi-judicial functions assigned to departments be exercised by ministerial tribunals, that parties be given an opportunity to state their case and of knowing the case which they have to meet, that decisions be given in a "reasoned document," that epitomes of leading cases be published for public guidance, that reports of subordinate officers concerning early stages of such inquiries be published except for the most exceptional cases where the "strongest reasons of public policy should be held to justify a departure from this rule." These are held minimum standards of procedure in terms of "natural justice."

There are annexed to the report two notes by Professor Laski and Miss Ellen Wilkinson, M.P. Professor Laski presents a warning and protest concerning the dangers inherent in the judicial interpretation of statutes. Miss Wilkinson concurs in this note and adds another, stressing the value and importance, "in the conditions of the modern state," of delegating legislative power and the necessity for more adequate procedure in Parliament in considering the principles of legislative proposals. With the general tenor of this note, Professor Laski expresses agreement.

The above summary does not do justice to the value of the analyses of the central problems of procedure and discretion inherent in modern administration. One should repeat that these analyses are most pertinent to American conditions, and that the very difficulties encountered in attempting to define such categories as "executive" and "judicial" strikingly parallel similar difficulties on this side. The specific proposals are full of suggestion for own situation; while the fundamental assumptions regarding "the rule of law," thanks in part perhaps to the influence of the same writer, A. V. Dicey, are also present here. And in both countries a questioning of those assumptions—or at least of their implications in institutional arrangements and procedure—may be discerned.

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The Lytton Report.[1] The title is not only misleading but even obscures one of the most significant features of the report of the Commission of Enquiry of the League of Nations which was authorized by the Council on December 10, 1931, and the composition of which was approved on January 14 following. From the popular title which has been given to the report, it might be inferred that it is the work of one man, an Englishman, whereas it is the unanimous report and recommendation of five men of five nationalities—Italian, French, English, American, and German. That five men of such diverse associations could have reached an agreement upon a report so incisive and upon recommendation so comprehensive and concise is a very remarkable characteristic of the document.

The report comprises 148 pages, a series of maps, and a set of annexes which are bound separately. As this is being written, neither the annexes nor the maps, for which a pocket is left in the cover of the volume first published, have arrived in the United States in quantity. The writer has, however, been permitted to examine a set of the maps and can commend them as of importance. There is, for example, a series of maps showing the military positions of the Japanese and the Chinese forces on several dates selected with reference to the various actions of the League. From this series alone, one is left in no doubt as to the extent to which Japan ignored the League admonitions, and even its own engagements, in the autumn and winter of 1931-32. There is a railway map in colors which should be compared with the railway map in Document B of the Japanese White Paper, the publication of which preceded the Lytton report by a few weeks. Indeed, the two Japanese White Papers, "The Present Condition of China, Document A," and "Relations of Japan with Manchuria and Mongolia, Document B," are desirable companion volumes. Published without an imprint, they carry the legend that "the present revised edition is printed in July, 1932." Presumably they are documents which were first prepared by the Japanese government for submission to the Lytton Commission, the report of which is so often an effective and convincing reply as to facts.

The Lytton report is a document which grows on one. Easy to read because of its pellucid style, it is annotated with side notes which are almost as good as an index. The report carries the conviction which is derived from conservative statement of facts, even from under-statement. Once read, the document invites rereading. For many years to come, it is likely to remain the best brief résumé of the facts which led up to the Japanese military excursion of September, 1931, and later. Indeed, the report, with the annexes, assuming that the latter are as carefully prepared, would

[1] *League of Nations Publications.* C. 663. M. 320. 1932. VII. The Government Printing Office in Washington promptly reprinted the report in a forty-cent edition, but without the maps and indexes.

serve as a basic text for a short college course on contemporary politics in the Far East.

The terms of reference under which the Commission acted were very broad: "To study on the spot and report to the Council on any circumstances which, affecting international relations, threaten to disturb peace between China and Japan, or the good understanding between them upon which peace depends."

Arriving in the Far East, the Commission found two states waging undeclared war upon one another, one state by military measures, the other by pacific means, i.e., the boycott. If the reader objects to the foregoing sentence, he may be reminded that the old, carefully wrought, vocabulary of international law has now become obsolete to describe the relations of states. We could spare "sovereignty," but "war" was really useful. As for "self-defense," which now becomes as important as "war" once was, the Commission evades definition except as it declares that, whatever it may be, it does not include what the Japanese did in Manchuria on the night of September 18-19, 1931. "The military operations of the Japanese troops during this night . . . cannot be regarded as measures of legitimate self-defense." But the following sentence also should be quoted, for it is characteristic of the report: "In saying this, the Commission does not exclude the hypothesis that the officers on the spot may have thought they were acting in self-defense." As for the Chinese method of waging the war, the Commission reports that "the evidence at the disposal of the Commission does not bear out" the contention of the Chinese that "the boycott . . . is pursued, generally speaking, in a legitimate manner."

The Commission interpreted the terms of reference in no narrow spirit and set out to uncover the underlying causes of the conflict. It is not that there existed in Manchuria a peculiar condition of disorder which required intervention, for similar conditions exist in large areas of China proper. The difference between China proper and Manchuria, at this point, lies in the fact that Japan claims in the latter a special interest unlike that elsewhere in China. In an extremely well organized chapter, "Manchurian Issues Between Japan and China," the report traces the growth of the Japanese claims to a "special position" in Manchuria. The latter is another term in the vocabulary of the new international law which needs defining. Even Lord Lytton, with all his literary tradition, seems to have been mystified by the term, but the Commision reports that whatever the nature of this "special position" it appears to be in conflict with China's sovereign rights. The Commission rejects the assertion that Manchuria is, or ever has been in the last three centuries, not a part of China.

Rejecting the suggestion of a mere restoration of the *status quo ante*, the Commission in Chapter IX puts forth certain principles and condi-

tions essential for an equitable and permanent settlement, and follows them with constructive recommendations. First it lays stress on the necessity, alike for Japan and for China, of the creation of "an atmosphere of external confidence and internal peace, very different from that now existing in the Far East," if the capital necessary for rapid economic development is to be forthcoming. "Japan requires not only the Manchurian, but the whole Chinese, market." The inference is that if Japan holds what she has grabbed in Manchuria, she is likely to lose the still more valuable asset of Chinese trade. Japan is advised that the present methods are of questionable efficacy to insure against an external danger [i.e., Russia], since there will be the danger that the disintegration of China would "lead, perhaps rapidly, to serious international rivalries" from which Japan might suffer much, as in fact she did in 1895.

On the other hand, Japanese security is unattainable without a degree of reconstruction in China such as neither Japan, nor any power, nor any group of powers lacking Chinese coöperation, will ever be able to accomplish. The Commission therefore proposes that there shall be a "temporary international coöperation in the internal reconstruction of China, as suggested by the late Dr. Sun Yat-sen." There is no further amplification of what is contemplated for China, but one ventures the guess that any foreign coöperation in the reform of China which is positive enough to be effective will be in equal degree unacceptable to the Chinese peoples in their present mood. It would be easy enough for the Powers to get into China, but it would be well nigh impossible, once in, to get out. Nor is it quite clear in what manner the League could make the necessary coöperation really effective.

The concrete suggestions of the Commission are that Japan and China open direct negotiations in an advisory conference for a special régime for the administration of the Three Eastern Provinces. Jehol should be the object of a special agreement. In the advisory conference there should be two delegations representing the local population, one selected by Japan, and the other by China. The Council of the League should become a board of reference and conciliation. Simultaneously, Japan and China should enter upon discussion of their respective rights and interests elsewhere. Out of these negotiations the Commission would have come treaties of commerce, conciliation and arbitration, non-aggression and mutual assistance, a political treaty, and a unilateral declaration by China constituting a practically autonomous government for Manchuria.

The principles to be incorporated in the settlement would include: free participation of Japan in the economic development of Manchuria, but without political or economic control; complete opening of Manchuria to settlement and leasing, but with some modification of the principle of

extraterritoriality; and the conversion of the Japanese railways into purely commercial concerns. By large use of the principle of conciliation and arbitration, and by the generous use of foreign advisers, it is believed that the rights of all could be adequately conserved. The accomplishment of such a program would give the League of Nations a prestige and influence in world affairs such as otherwise it might not attain in a long time.

This is not the time, nor is it the place, to speculate upon what may come of the Lytton report. If, either sooner or later, it could be put into effect in substance, three objects would be accomplished. The peace of the Far East would be restored, the trade opportunities of this vast area would again become open, and the peace machinery of the society of nations would be measurably salvaged. If the report fails of accomplishment, it is difficult to see how any of these three objectives is likely to be realized. At the present moment, China is more threatened from within than from Japan. Perhaps Japan is also more in danger from within than from the Chinese boycott, though both are serious. Furthermore, the League is not without its internal weakness, and, as for the Stimson non-aggression policy, we shall have to wait at least until there is a new secretary of state to be assured that it is, in fact, an American policy; as yet it is merely a declaration in many respects similar in character to the "open door" policy of John Hay, which never meant to Hay's successors in office quite what it seemed to mean fresh from the pen of its author.

However, it is something just to have the Lytton report. Never before, except from the teachers and the preachers and the philanthropists, have we had so grand a plan of peace, and never from any source a plan so conceived in prudence as well as sympathy, so lofty in tone and yet so realistic as to action proposed.

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